

108TH CONGRESS  
2D SESSION

# S. 1637

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## AN ACT

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

4                       **TABLE OF CONTENTS.**

5       (a) SHORT TITLE.—This Act may be cited as the  
6       “Jumpstart Our Business Strength (JOBS) Act”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-  
 2 wise expressly provided, whenever in this Act an amend-  
 3 ment or repeal is expressed in terms of an amendment  
 4 to, or repeal of, a section or other provision, the reference  
 5 shall be considered to be made to a section or other provi-  
 6 sion of the Internal Revenue Code of 1986.

7 (c) TABLE OF CONTENTS.—

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**1 TITLE I—PROVISIONS RELATING**  
**2 TO REPEAL OF EXCLUSION**  
**3 FOR EXTRATERRITORIAL IN-**  
**4 COME**

**5 SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**  
**6 INCOME.**

7 (a) IN GENERAL.—Section 114 is hereby repealed.

8 (b) CONFORMING AMENDMENTS.—

9 (1)(A) Subpart E of part III of subchapter N  
10 of chapter 1 (relating to qualifying foreign trade in-  
11 come) is hereby repealed.

12 (B) The table of subparts for such part III is  
13 amended by striking the item relating to subpart E.

14 (2) The table of sections for part III of sub-  
15 chapter B of chapter 1 is amended by striking the  
16 item relating to section 114.

17 (3) The second sentence of section  
18 56(g)(4)(B)(i) is amended by striking “114 or”.

19 (4) Section 275(a) is amended—

20 (A) by inserting “or” at the end of para-  
21 graph (4)(A), by striking “or” at the end of

1 paragraph (4)(B) and inserting a period, and  
2 by striking subparagraph (C), and

3 (B) by striking the last sentence.

4 (5) Paragraph (3) of section 864(e) is amend-  
5 ed—

6 (A) by striking:

7 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO  
8 ACCOUNT.—

9 “(A) IN GENERAL.—For purposes of”; and  
10 inserting:

11 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO  
12 ACCOUNT.—For purposes of”, and

13 (B) by striking subparagraph (B).

14 (6) Section 903 is amended by striking “114,  
15 164(a),” and inserting “164(a)”.

16 (7) Section 999(c)(1) is amended by striking  
17 “941(a)(5),”.

18 (c) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by  
20 this section shall apply to transactions occurring  
21 after the date of the enactment of this Act.

22 (2) BINDING CONTRACTS.—The amendments  
23 made by this section shall not apply to any trans-  
24 action in the ordinary course of a trade or business  
25 which occurs pursuant to a binding contract—

1 (A) which is between the taxpayer and a  
2 person who is not a related person (as defined  
3 in section 943(b)(3) of the Internal Revenue  
4 Code of 1986, as in effect on the day before the  
5 date of the enactment of this Act), and

6 (B) which is in effect on September 17,  
7 2003, and at all times thereafter.

8 (d) REVOCATION OF SECTION 943(e) ELECTIONS.—

9 (1) IN GENERAL.—In the case of a corporation  
10 that elected to be treated as a domestic corporation  
11 under section 943(e) of the Internal Revenue Code  
12 of 1986 (as in effect on the day before the date of  
13 the enactment of this Act)—

14 (A) the corporation may, during the 1-year  
15 period beginning on the date of the enactment  
16 of this Act, revoke such election, effective as of  
17 such date of enactment, and

18 (B) if the corporation does revoke such  
19 election—

20 (i) such corporation shall be treated  
21 as a domestic corporation transferring (as  
22 of such date of enactment) all of its prop-  
23 erty to a foreign corporation in connection  
24 with an exchange described in section 354  
25 of such Code, and

1 (ii) no gain or loss shall be recognized  
2 on such transfer.

3 (2) EXCEPTION.—Subparagraph (B)(ii) of  
4 paragraph (1) shall not apply to gain on any asset  
5 held by the revoking corporation if—

6 (A) the basis of such asset is determined  
7 in whole or in part by reference to the basis of  
8 such asset in the hands of the person from  
9 whom the revoking corporation acquired such  
10 asset,

11 (B) the asset was acquired by transfer (not  
12 as a result of the election under section 943(e)  
13 of such Code) occurring on or after the 1st day  
14 on which its election under section 943(e) of  
15 such Code was effective, and

16 (C) a principal purpose of the acquisition  
17 was the reduction or avoidance of tax (other  
18 than a reduction in tax under section 114 of  
19 such Code, as in effect on the day before the  
20 date of the enactment of this Act).

21 (e) GENERAL TRANSITION.—

22 (1) IN GENERAL.—In the case of a taxable year  
23 ending after the date of the enactment of this Act  
24 and beginning before January 1, 2007, for purposes  
25 of chapter 1 of such Code, a current FSC/ETI bene-

1        ficiary shall be allowed a deduction equal to the  
 2        transition amount determined under this subsection  
 3        with respect to such beneficiary for such year.

4            (2) CURRENT FSC/ETI BENEFICIARY.—The  
 5        term “current FSC/ETI beneficiary” means any cor-  
 6        poration which entered into one or more transactions  
 7        during its taxable year beginning in calendar year  
 8        2002 with respect to which FSC/ETI benefits were  
 9        allowable.

10          (3) TRANSITION AMOUNT.—For purposes of  
 11        this subsection—

12            (A) IN GENERAL.—The transition amount  
 13        applicable to any current FSC/ETI beneficiary  
 14        for any taxable year is the phaseout percentage  
 15        of the base period amount.

16            (B) PHASEOUT PERCENTAGE.—

17            (i) IN GENERAL.—In the case of a  
 18        taxpayer using the calendar year as its  
 19        taxable year, the phaseout percentage shall  
 20        be determined under the following table:

| <b>Years:</b> | <b>The phaseout<br/>percentage is:</b> |
|---------------|--|
| 2005 .....    | 80                                     |
| 2006 .....    | 60.                                    |

21            (ii) SPECIAL RULE FOR 2004.—The  
 22        phaseout percentage for 2004 shall be the  
 23        amount that bears the same ratio to 80



1 percent as the number of days after the  
 2 date of the enactment of this Act bears to  
 3 366.

4 (iii) SPECIAL RULE FOR FISCAL YEAR  
 5 TAXPAYERS.—In the case of a taxpayer  
 6 not using the calendar year as its taxable  
 7 year, the phaseout percentage is the  
 8 weighted average of the phaseout percent-  
 9 ages determined under the preceding provi-  
 10 sions of this paragraph with respect to cal-  
 11 endar years any portion of which is in-  
 12 cluded in the taxpayer's taxable year. The  
 13 weighted average shall be determined on  
 14 the basis of the respective portions of the  
 15 taxable year in each calendar year.

16 (C) SHORT TAXABLE YEAR.—The Sec-  
 17 retary shall prescribe guidance for the computa-  
 18 tion of the transition amount in the case of a  
 19 short taxable year.

20 (4) BASE PERIOD AMOUNT.—For purposes of  
 21 this subsection, the base period amount is the aver-  
 22 age FSC/ETI benefit for the taxpayer's taxable  
 23 years beginning in calendar years 2000, 2001, and  
 24 2002.

1           (5) FSC/ETI BENEFIT.—For purposes of this  
2 subsection, the term “FSC/ETI benefit” means—

3                   (A) amounts excludable from gross income  
4 under section 114 of such Code, and

5                   (B) the exempt foreign trade income of re-  
6 lated foreign sales corporations from property  
7 acquired from the taxpayer (determined without  
8 regard to section 923(a)(5) of such Code (relat-  
9 ing to special rule for military property), as in  
10 effect on the day before the date of the enact-  
11 ment of the FSC Repeal and Extraterritorial  
12 Income Exclusion Act of 2000).

13 In determining the FSC/ETI benefit there shall be  
14 excluded any amount attributable to a transaction  
15 with respect to which the taxpayer is the lessor un-  
16 less the leased property was manufactured or pro-  
17 duced in whole or in significant part by the tax-  
18 payer.

19           (6) SPECIAL RULE FOR AGRICULTURAL AND  
20 HORTICULTURAL COOPERATIVES.—Determinations  
21 under this subsection with respect to an organization  
22 described in section 943(g)(1) of such Code, as in  
23 effect on the day before the date of the enactment  
24 of this Act, shall be made at the cooperative level  
25 and the purposes of this subsection shall be carried

1 out in a manner similar to section 199(h)(2) of such  
2 Code, as added by this Act. Such determinations  
3 shall be in accordance with such requirements and  
4 procedures as the Secretary may prescribe.

5 (7) CERTAIN RULES TO APPLY.—Rules similar  
6 to the rules of section 41(f) of such Code shall apply  
7 for purposes of this subsection.

8 (8) COORDINATION WITH BINDING CONTRACT  
9 RULE.—The deduction determined under paragraph  
10 (1) for any taxable year shall be reduced by the  
11 phaseout percentage of any FSC/ETI benefit real-  
12 ized for the taxable year by reason of subsection  
13 (c)(2) or section 5(c)(1)(B) of the FSC Repeal and  
14 Extraterritorial Income Exclusion Act of 2000, ex-  
15 cept that for purposes of this paragraph the phase-  
16 out percentage for 2004 shall be treated as being  
17 equal to 100 percent.

18 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH  
19 INCLUDES DATE OF ENACTMENT.—In the case of a  
20 taxable year which includes the date of the enact-  
21 ment of this Act, the deduction allowed under this  
22 subsection to any current FSC/ETI beneficiary shall  
23 in no event exceed—

1 (A) 100 percent of such beneficiary's base  
 2 period amount for calendar year 2004, reduced  
 3 by

4 (B) the FSC/ETI benefit of such bene-  
 5 ficiary with respect to transactions occurring  
 6 during the portion of the taxable year ending on  
 7 the date of the enactment of this Act.

8 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**  
 9 **UTABLE TO UNITED STATES PRODUCTION**  
 10 **ACTIVITIES.**

11 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 12 ter 1 (relating to itemized deductions for individuals and  
 13 corporations) is amended by adding at the end the fol-  
 14 lowing new section:

15 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**  
 16 **TION ACTIVITIES.**

17 “(a) ALLOWANCE OF DEDUCTION.—

18 “(1) IN GENERAL.—There shall be allowed as a  
 19 deduction an amount equal to 9 percent of the quali-  
 20 fied production activities income of the taxpayer for  
 21 the taxable year.

22 “(2) PHASEIN.—In the case of taxable years  
 23 beginning in 2004, 2005, 2006, 2007, or 2008,  
 24 paragraph (1) shall be applied by substituting for

1 the percentage contained therein the transition per-  
 2 centage determined under the following table:

| <b>“Taxable years<br/>beginning in:</b> | <b>The transition<br/>percentage is:</b> |
|---|--|
| 2004, 2005, or 2006                     | 5  |
| 2007 .....                              | 6  |
| 2008 .....                              | 7.                                       |

3 “(b) DEDUCTION LIMITED TO WAGES PAID.—

4 “(1) IN GENERAL.—The amount of the deduc-  
 5 tion allowable under subsection (a) for any taxable  
 6 year shall not exceed 50 percent of the W-2 wages  
 7 of the employer for the taxable year.

8 “(2) W-2 WAGES.—For purposes of paragraph  
 9 (1), the term ‘W-2 wages’ means the sum of the ag-  
 10 gregate amounts the taxpayer is required to include  
 11 on statements under paragraphs (3) and (8) of sec-  
 12 tion 6051(a) with respect to employment of employ-  
 13 ees of the taxpayer during the taxpayer’s taxable  
 14 year.

15 “(3) SPECIAL RULES.—

16 “(A) PASS-THRU ENTITIES.—In the case  
 17 of an S corporation, partnership, estate or  
 18 trust, or other pass-thru entity, the limitation  
 19 under this subsection shall apply at the entity  
 20 level. The preceding sentence shall not apply to  
 21 any entity all of the ownership interests of  
 22 which are held directly or indirectly by members  
 23 of the same expanded affiliated group.

1 “(B) ACQUISITIONS AND DISPOSITIONS.—

2 The Secretary shall provide for the application  
3 of this subsection in cases where the taxpayer  
4 acquires, or disposes of, the major portion of a  
5 trade or business or the major portion of a sep-  
6 arate unit of a trade or business during the tax-  
7 able year.

8 “(c) QUALIFIED PRODUCTION ACTIVITIES IN-  
9 COME.—For purposes of this section—

10 “(1) IN GENERAL.—The term ‘qualified produc-  
11 tion activities income’ means an amount equal to the  
12 portion of the modified taxable income of the tax-  
13 payer which is attributable to domestic production  
14 activities.

15 “(2) REDUCTION FOR TAXABLE YEARS BEGIN-  
16 NING BEFORE 2013.—The amount otherwise deter-  
17 mined under paragraph (1) (the ‘unreduced  
18 amount’) shall not exceed—

19 “(A) in the case of taxable years beginning  
20 before 2010, the product of the unreduced  
21 amount and the domestic/worldwide fraction,  
22 and

23 “(B) in the case of taxable years beginning  
24 in 2010, 2011, or 2012, an amount equal to the  
25 sum of—

1 “(i) the product of the unreduced  
 2 amount and the domestic/worldwide frac-  
 3 tion, plus

4 “(ii) the applicable percentage of an  
 5 amount equal to the unreduced amount  
 6 minus the amount determined under clause  
 7 (i).

8 For purposes of subparagraph (B)(ii), the applicable  
 9 percentage is 25 percent for 2010, 50 percent for  
 10 2011, and 75 percent for 2012.

11 “(d) DETERMINATION OF INCOME ATTRIBUTABLE  
 12 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes  
 13 of this section—

14 “(1) IN GENERAL.—The portion of the modified  
 15 taxable income which is attributable to domestic pro-  
 16 duction activities is so much of the modified taxable  
 17 income for the taxable year as does not exceed—

18 “(A) the taxpayer’s domestic production  
 19 gross receipts for such taxable year, reduced by

20 “(B) the sum of—

21 “(i) the costs of goods sold that are  
 22 allocable to such receipts,

23 “(ii) other deductions, expenses, or  
 24 losses directly allocable to such receipts,  
 25 and

1                   “(iii) a proper share of other deduc-  
2                   tions, expenses, and losses that are not di-  
3                   rectly allocable to such receipts or another  
4                   class of income.

5                   “(2) ALLOCATION METHOD.—The Secretary  
6                   shall prescribe rules for the proper allocation of  
7                   items of income, deduction, expense, and loss for  
8                   purposes of determining income attributable to do-  
9                   mestic production activities.

10                  “(3) SPECIAL RULES FOR DETERMINING  
11                  COSTS.—

12                   “(A) IN GENERAL.—For purposes of deter-  
13                   mining costs under clause (i) of paragraph  
14                   (1)(B), any item or service brought into the  
15                   United States shall be treated as acquired by  
16                   purchase, and its cost shall be treated as not  
17                   less than its fair market value immediately  
18                   after it entered the United States. A similar  
19                   rule shall apply in determining the adjusted  
20                   basis of leased or rented property where the  
21                   lease or rental gives rise to domestic production  
22                   gross receipts.

23                   “(B) EXPORTS FOR FURTHER MANUFAC-  
24                   TURE.—In the case of any property described  
25                   in subparagraph (A) that had been exported by



1           the taxpayer for further manufacture, the in-  
2           crease in cost or adjusted basis under subpara-  
3           graph (A) shall not exceed the difference be-  
4           tween the value of the property when exported  
5           and the value of the property when brought  
6           back into the United States after the further  
7           manufacture.

8           “(4) MODIFIED TAXABLE INCOME.—The term  
9           ‘modified taxable income’ means taxable income  
10          computed without regard to the deduction allowable  
11          under this section.

12          “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—  
13          For purposes of this section—

14                  “(1) IN GENERAL.—The term ‘domestic produc-  
15                  tion gross receipts’ means the gross receipts of the  
16                  taxpayer which are derived from—

17                          “(A) any sale, exchange, or other disposi-  
18                          tion of, or

19                          “(B) any lease, rental, or license of,  
20                  qualifying production property which was manufac-  
21                  tured, produced, grown, or extracted in whole or in  
22                  significant part by the taxpayer within the United  
23                  States.

1           “(2) SPECIAL RULES FOR CERTAIN PROP-  
2       ERTY.—In the case of any qualifying production  
3       property described in subsection (f)(1)(C)—

4           “(A) such property shall be treated for  
5       purposes of paragraph (1) as produced in sig-  
6       nificant part by the taxpayer within the United  
7       States if more than 50 percent of the aggregate  
8       development and production costs are incurred  
9       by the taxpayer within the United States, and

10          “(B) if a taxpayer acquires such property  
11       before such property begins to generate sub-  
12       stantial gross receipts, any development or pro-  
13       duction costs incurred before the acquisition  
14       shall be treated as incurred by the taxpayer for  
15       purposes of subparagraph (A) and paragraph  
16       (1).

17          “(3) GROSS RECEIPTS FROM USE OF FILMS  
18       AND VIDEO TAPE.—In the case of any qualifying  
19       production property which is property described in  
20       section 168(f)(3) produced in whole or in significant  
21       part by the taxpayer within the United States (de-  
22       termined after application of paragraph (2)), domes-  
23       tic production gross receipts shall include gross re-  
24       ceipts derived by the taxpayer from the use of the  
25       property by the taxpayer.

1       “(f) QUALIFYING PRODUCTION PROPERTY.—For  
2 purposes of this section—

3               “(1) IN GENERAL.—Except as otherwise pro-  
4 vided in this paragraph, the term ‘qualifying produc-  
5 tion property’ means—

6                       “(A) any tangible personal property,

7                       “(B) any computer software, and

8                       “(C) any property described in section  
9 168(f) (3) or (4), including any underlying  
10 copyright or trademark.

11               “(2) EXCLUSIONS FROM QUALIFYING PRODUC-  
12 TION PROPERTY.—The term ‘qualifying production  
13 property’ shall not include—

14                       “(A) consumable property that is sold,  
15 leased, or licensed by the taxpayer as an inte-  
16 gral part of the provision of services,

17                       “(B) oil or gas,

18                       “(C) electricity,

19                       “(D) water supplied by pipeline to the con-  
20 sumer,

21                       “(E) utility services, or

22                       “(F) any film, tape, recording, book, mag-  
23 azine, newspaper, or similar property the mar-  
24 ket for which is primarily topical or otherwise  
25 essentially transitory in nature.

1 Subparagraph (F) shall not apply to property described  
 2 in section 168(f)(3) to the extent of the gross receipts  
 3 from the use of the property to which subsection (e)(3)  
 4 applies (determined after application of this sentence).

5 “(g) DOMESTIC/WORLDWIDE FRACTION.—For pur-  
 6 poses of this section—

7 “(1) IN GENERAL.—The term ‘domestic/world-  
 8 wide fraction’ means a fraction (not greater than  
 9 1)—

10 “(A) the numerator of which is the value  
 11 of the domestic production of the taxpayer, and

12 “(B) the denominator of which is the value  
 13 of the worldwide production of the taxpayer.

14 “(2) VALUE OF DOMESTIC PRODUCTION.—The  
 15 value of domestic production is the excess (if any)  
 16 of—

17 “(A) the domestic production gross re-  
 18 ceipts, over

19 “(B) the cost of purchased inputs allocable  
 20 to such receipts that are deductible under this  
 21 chapter for the taxable year.

22 “(3) PURCHASED INPUTS.—

23 “(A) IN GENERAL.—Purchased inputs are  
 24 any of the following items acquired by pur-  
 25 chase:

1 “(i) Services (other than services of  
2 employees) used in manufacture, produc-  
3 tion, growth, or extraction activities.

4 “(ii) Items consumed in connection  
5 with such activities.

6 “(iii) Items incorporated as part of  
7 the property being manufactured, pro-  
8 duced, grown, or extracted.

9 “(B) SPECIAL RULE.—Rules similar to the  
10 rules of subsection (d)(3) shall apply for pur-  
11 poses of this subsection.

12 “(4) VALUE OF WORLDWIDE PRODUCTION.—

13 “(A) IN GENERAL.—The value of world-  
14 wide production shall be determined under the  
15 principles of paragraph (2), except that—

16 “(i) worldwide production gross re-  
17 ceipts shall be taken into account, and

18 “(ii) paragraph (3)(B) shall not apply.

19 “(B) WORLDWIDE PRODUCTION GROSS RE-  
20 CEIPTS.—The worldwide production gross re-  
21 ceipts is the amount that would be determined  
22 under subsection (e) if such subsection were ap-  
23 plied without any reference to the United  
24 States.

25 “(h) DEFINITIONS AND SPECIAL RULES.—

1           “(1) APPLICATION OF SECTION TO PASS-THRU  
2 ENTITIES.—In the case of an S corporation, partner-  
3 ship, estate or trust, or other pass-thru entity—

4           “(A) subject to the provisions of paragraph  
5 (2) and subsection (b)(3)(A), this section shall  
6 be applied at the shareholder, partner, or simi-  
7 lar level, and

8           “(B) the Secretary shall prescribe rules for  
9 the application of this section, including rules  
10 relating to—

11           “(i) restrictions on the allocation of  
12 the deduction to taxpayers at the partner  
13 or similar level, and

14           “(ii) additional reporting require-  
15 ments.

16           “(2) PATRONS OF AGRICULTURAL AND HORTI-  
17 CULTURAL COOPERATIVES.—

18           “(A) IN GENERAL.—If any amount de-  
19 scribed in paragraph (1) or (3) of section 1385  
20 (a)—

21           “(i) is received by a person from an  
22 organization to which part I of subchapter  
23 T applies which is engaged—

24           “(I) in the manufacturing, pro-  
25 duction, growth, or extraction in

1 whole or significant part of any agri-  
 2 cultural or horticultural product, or

3 “(II) in the marketing of agricul-  
 4 tural or horticultural products, and

5 “(ii) is allocable to the portion of the  
 6 qualified production activities income of  
 7 the organization which, but for this para-  
 8 graph, would be deductible under sub-  
 9 section (a) by the organization and is des-  
 10 ignated as such by the organization in a  
 11 written notice mailed to its patrons during  
 12 the payment period described in section  
 13 1382(d),

14 then such person shall be allowed a deduction  
 15 under subsection (a) with respect to such  
 16 amount. The taxable income of the organization  
 17 shall not be reduced under section 1382 by rea-  
 18 son of any amount to which the preceding sen-  
 19 tence applies.

20 “(B) SPECIAL RULES.—For purposes of  
 21 applying subparagraph (A), in determining the  
 22 qualified production activities income of the or-  
 23 ganization under this section—

24 “(i) there shall not be taken into ac-  
 25 count in computing the organization’s

modified taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

“(ii) in the case of an organization described in subparagraph (A)(i)(II), the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

“(3) SPECIAL RULE FOR AFFILIATED GROUPS.—

“(A) IN GENERAL.—All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

“(B) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined—

“(i) by substituting ‘50 percent’ for ‘80 percent’ each place it appears, and



1 “(ii) without regard to paragraphs (2)  
2 and (4) of section 1504(b).

3 For purposes of determining the domestic/  
4 worldwide fraction under subsection (g), clause  
5 (ii) shall be applied by also disregarding para-  
6 graphs (3) and (8) of section 1504(b).

7 “(4) COORDINATION WITH MINIMUM TAX.—The  
8 deduction under this section shall be allowed for  
9 purposes of the tax imposed by section 55; except  
10 that for purposes of section 55, alternative minimum  
11 taxable income shall be taken into account in deter-  
12 mining the deduction under this section.

13 “(5) ORDERING RULE.—The amount of any  
14 other deduction allowable under this chapter shall be  
15 determined as if this section had not been enacted.

16 “(6) TRADE OR BUSINESS REQUIREMENT.—  
17 This section shall be applied by only taking into ac-  
18 count items which are attributable to the actual con-  
19 duct of a trade or business.

20 “(7) POSSESSIONS, ETC.—

21 “(A) IN GENERAL.—For purposes of sub-  
22 sections (d) and (e), the term ‘United States’  
23 includes the Commonwealth of Puerto Rico,  
24 Guam, American Samoa, the Commonwealth of

1 the Northern Mariana Islands, and the Virgin  
2 Islands of the United States.

3 “(B) SPECIAL RULES FOR APPLYING WAGE  
4 LIMITATION.—For purposes of applying the  
5 limitation under subsection (b) for any taxable  
6 year—

7 “(i) the determination of W–2 wages  
8 of a taxpayer shall be made without regard  
9 to any exclusion under section 3401(a)(8)  
10 for remuneration paid for services per-  
11 formed in a jurisdiction described in sub-  
12 paragraph (A), and

13 “(ii) in determining the amount of  
14 any credit allowable under section 30A or  
15 936 for the taxable year, there shall not be  
16 taken into account any wages which are  
17 taken into account in applying such limita-  
18 tion.

19 “(8) COORDINATION WITH TRANSITION  
20 RULES.—For purposes of this section—

21 “(A) domestic production gross receipts  
22 shall not include gross receipts from any trans-  
23 action if the binding contract transition relief of  
24 section 101(c)(2) of the Jumpstart Our Busi-

1           ness Strength (JOBS) Act applies to such  
2           transaction, and

3           “(B) any deduction allowed under section  
4           101(e) of such Act shall be disregarded in de-  
5           termining the portion of the taxable income  
6           which is attributable to domestic production  
7           gross receipts.

8           “(9) SEPARATE APPLICATION TO FILMS AND  
9           VIDEOTAPE.—

10           “(A) IN GENERAL.—In the case of quali-  
11           fying production property described in section  
12           168(f)(3), the deduction under this section shall  
13           be determined separately with respect to quali-  
14           fied production activities income of the taxpayer  
15           allocable to each of the following markets with  
16           respect to such property:

17           “(i) Theatrical.

18           “(ii) Broadcast television (including  
19           cable, foreign, pay-per-view, and syndica-  
20           tion).

21           “(iii) Home video.

22           “(B) RULES FOR SEPARATE DETERMINA-  
23           TION.—Except as provided in subparagraph  
24           (C)—

1 “(i) any computation required to de-  
 2 termine the amount of the deduction with  
 3 respect to any of the markets described in  
 4 subparagraph (A) shall be made by only  
 5 taking into account items properly allo-  
 6 cable to such market, including the com-  
 7 putation of qualified production activities  
 8 income, modified taxable income, and the  
 9 domestic/worldwide fraction, and

10 “(ii) such items shall not be taken  
 11 into account in determining the deduction  
 12 with respect to either of the other 2 mar-  
 13 kets or with respect to qualified production  
 14 activities income of the taxpayer not allo-  
 15 cable to any of such markets.

16 “(C) WAGE LIMITATION.—This paragraph  
 17 shall not apply for purposes of subsection (b)  
 18 and subsection (b) shall be applied after the ap-  
 19 plication of this paragraph.”

20 (b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to  
 21 disallowance of items not deductible in computing earnings  
 22 and profits) is amended by adding at the end the following  
 23 new clause:

24 “(v) DEDUCTION FOR DOMESTIC PRO-  
 25 Duction.—Clause (i) shall not apply to

1                   any amount allowable as a deduction under  
2                   section 199.”.

3           (c) CLERICAL AMENDMENT.—The table of sections  
4 for part VI of subchapter B of chapter 1 is amended by  
5 adding at the end the following new item:

“Sec. 199. Income attributable to domestic production activi-  
ties.”.

6           (d) EFFECTIVE DATE.—

7               (1) IN GENERAL.—The amendments made by  
8 this section shall apply to taxable years ending after  
9 the date of the enactment of this Act.

10           (2) APPLICATION OF SECTION 15.—Section 15  
11 of the Internal Revenue Code of 1986 shall apply to  
12 the amendments made by this section as if they were  
13 changes in a rate of tax.

14 **SEC. 103. DEDUCTION FOR UNITED STATES PRODUCTION**  
15 **ACTIVITIES INCLUDES INCOME RELATED TO**  
16 **CERTAIN ARCHITECTURAL AND ENGINEER-**  
17 **ING SERVICES.**

18           (a) IN GENERAL.—Paragraph (1) of section 199(e)  
19 (relating to domestic production gross receipts), as added  
20 by section 102, is amended to read as follows:

21               “(1) IN GENERAL.—

22                   “(A) RECEIPTS FROM QUALIFYING PRO-  
23                   DUCTION PROPERTY.—The term ‘domestic pro-

duction gross receipts’ means the gross receipts  
of the taxpayer which are derived from—

“(i) any sale, exchange, or other disposition of, or

“(ii) any lease, rental, or license of, qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

“(B) RECEIPTS FROM CERTAIN SERVICES.—

“(i) IN GENERAL.—Such term also includes the applicable percentage of gross receipts of the taxpayer which are derived from any engineering or architectural services performed in the United States for construction projects in the United States.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined under the following table:

| <b>“In the case of any taxable year beginning in—</b> |      | <b>The applicable percentage is—</b> |
|---|------|--------------------------------------|
| 2004, 2005, 2006, 2007, or 2008 .....                 | 25   |                                      |
| 2009, 2010, 2011, or 2012 .....                       | 50   |                                      |
| 2013 or thereafter .....                              | 100. |                                      |

1 (b) LIMITATION OF EMPLOYER DEDUCTION FOR  
2 CERTAIN ENTERTAINMENT EXPENSES WITH RESPECT TO  
3 COVERED EMPLOYEES.—Paragraph (2) of section 274(e)  
4 (relating to expenses treated as compensation) is amended  
5 to read as follows:

6 “(2) EXPENSES TREATED AS COMPENSATION.—

7 Expenses for goods, services, and facilities—

8 “(A) in the case of a covered employee  
9 (within the meaning of section 162(m)(3)), to  
10 the extent that the expenses do not exceed the  
11 amount of the expenses treated by the taxpayer,  
12 with respect to the recipient of the entertain-  
13 ment, amusement, or recreation, as compensa-  
14 tion to such covered employee on the taxpayer’s  
15 return of tax under this chapter and as wages  
16 to such covered employee for purposes of chap-  
17 ter 24 (relating to withholding of income tax at  
18 source on wages), and

19 “(B) in the case of any other employee, to  
20 the extent that the expenses are treated by the  
21 taxpayer, with respect to the recipient of the  
22 entertainment, amusement, or recreation, as  
23 compensation to such employee on the tax-  
24 payer’s return of tax under this chapter and as  
25 wages to such employee for purposes of chapter

1           24 (relating to withholding of income tax at  
2           source on wages).”.

3           (c) EFFECTIVE DATES.—

4           (1) SUBSECTION (a).—The amendment made  
5           by subsection (a) shall apply to taxable years ending  
6           after the date of the enactment of this Act, and sec-  
7           tion 15 of the Internal Revenue Code of 1986 shall  
8           apply to the amendment made by this subsection as  
9           if it were a change in the rate of tax.

10          (2) SUBSECTION (b).—The amendment made  
11          by subsection (b) shall apply to expenses incurred  
12          after the date of the enactment of this Act and be-  
13          fore January 1, 2006.

## 14       **TITLE II—INTERNATIONAL TAX** 15               **PROVISIONS**

### 16       **Subtitle A—International Tax** 17               **Reform**

#### 18       **SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-** 19               **YEAR FOREIGN TAX CREDIT CARRYBACK.**

20          (a) GENERAL RULE.—Section 904(c) (relating to  
21          carryback and carryover of excess tax paid) is amended—

22               (1) by striking “in the second preceding taxable  
23          year,” and



1           (2) by striking “, and in the first, second, third,  
2           fourth, or fifth” and inserting “and in any of the  
3           first 20”.

4           (b) EXCESS EXTRACTION TAXES.—Paragraph (1) of  
5           section 907(f) is amended—

6           (1) by striking “in the second preceding taxable  
7           year,”,

8           (2) by striking “, and in the first, second, third,  
9           fourth, or fifth” and inserting “and in any of the  
10          first 20”, and

11          (3) by striking the last sentence.

12          (c) EFFECTIVE DATE.—

13          (1) CARRYBACK.—The amendments made by  
14          subsections (a)(1) and (b)(1) shall apply to excess  
15          foreign taxes arising in taxable years beginning after  
16          the date of the enactment of this Act.

17          (2) CARRYOVER.—The amendments made by  
18          subsections (a)(2) and (b)(2) shall apply to excess  
19          foreign taxes which (without regard to the amend-  
20          ments made by this section) may be carried to any  
21          taxable year ending after the date of the enactment  
22          of this Act.

1 **SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS**  
 2 **FROM NONCONTROLLED SECTION 902 COR-**  
 3 **PORATIONS.**

4 (a) IN GENERAL.—Section 904(d)(4) (relating to  
 5 look-thru rules apply to dividends from noncontrolled sec-  
 6 tion 902 corporations) is amended to read as follows:

7 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM  
 8 NONCONTROLLED SECTION 902 CORPORATIONS.—

9 “(A) IN GENERAL.—For purposes of this  
 10 subsection, any dividend from a noncontrolled  
 11 section 902 corporation with respect to the tax-  
 12 payer shall be treated as income described in a  
 13 subparagraph of paragraph (1) in proportion to  
 14 the ratio of—

15 “(i) the portion of earnings and prof-  
 16 its attributable to income described in such  
 17 subparagraph, to

18 “(ii) the total amount of earnings and  
 19 profits.

20 “(B) EARNINGS AND PROFITS OF CON-  
 21 TROLLED FOREIGN CORPORATIONS.—In the  
 22 case of any distribution from a controlled for-  
 23 eign corporation to a United States share-  
 24 holder, rules similar to the rules of subpara-  
 25 graph (A) shall apply in determining the extent  
 26 to which earnings and profits of the controlled

foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

“(C) SPECIAL RULES.—For purposes of this paragraph—

“(i) EARNINGS AND PROFITS.—

“(I) IN GENERAL.—The rules of section 316 shall apply.

“(II) REGULATIONS.—The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer’s acquisition of the stock to which the distributions relate.

“(ii) INADEQUATE SUBSTANTIATION.—If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

“(iii) COORDINATION WITH HIGHTAXED INCOME PROVISIONS.—Rules simi-

lar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

“(iv) LOOK-THRU WITH RESPECT TO CARRYOVER OF CREDIT.—Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation to such a taxable year for purposes of allocating such dividend among the separate categories in effect for such taxable year.”.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 904(d)(1) is hereby repealed.

(2) Section 904(d)(2)(C)(iii) is amended by adding “and” at the end of subclause (I), by striking subclause (II), and by redesignating subclause (III) as subclause (II).

1           (3) The last sentence of section 904(d)(2)(D) is  
 2           amended to read as follows: “Such term does not in-  
 3           clude any financial services income.”.

4           (4) Section 904(d)(2)(E) is amended—

5                   (A) by inserting “or (4)” after “paragraph  
 6           (3)” in clause (i), and

7                   (B) by striking clauses (ii) and (iv) and by  
 8           redesignating clause (iii) as clause (ii).

9           (5) Section 904(d)(3)(F) is amended by strik-  
 10          ing “(D), or (E)” and inserting “or (D)”.

11          (6) Section 864(d)(5)(A)(i) is amended by  
 12          striking “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

13          (c) EFFECTIVE DATE.—The amendments made by  
 14          this section shall apply to taxable years beginning after  
 15          December 31, 2002.

16   **SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MIN-**  
 17                   **IMUM TAX.**

18          (a) IN GENERAL.—

19               (1) Subsection (a) of section 59 is amended by  
 20          striking paragraph (2) and by redesignating para-  
 21          graphs (3) and (4) as paragraphs (2) and (3), re-  
 22          spectively.

23               (2) Section 53(d)(1)(B)(i)(II) is amended by  
 24          striking “and if section 59(a)(2) did not apply”.

1 (b) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to taxable years beginning after  
 3 December 31, 2004.

4 **SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC**  
 5 **LOSS.**

6 (a) GENERAL RULE.—Section 904 is amended by re-  
 7 designating subsections (g), (h), (i), (j), and (k) as sub-  
 8 sections (h), (i), (j), (k), and (l) respectively, and by in-  
 9 serting after subsection (f) the following new subsection:  
 10 “(g) RECHARACTERIZATION OF OVERALL DOMESTIC  
 11 LOSS.—

12 “(1) GENERAL RULE.—For purposes of this  
 13 subpart and section 936, in the case of any taxpayer  
 14 who sustains an overall domestic loss for any taxable  
 15 year beginning after December 31, 2006, that por-  
 16 tion of the taxpayer’s taxable income from sources  
 17 within the United States for each succeeding taxable  
 18 year which is equal to the lesser of—

19 “(A) the amount of such loss (to the extent  
 20 not used under this paragraph in prior taxable  
 21 years), or

22 “(B) 50 percent of the taxpayer’s taxable  
 23 income from sources within the United States  
 24 for such succeeding taxable year,

1 shall be treated as income from sources without the  
2 United States (and not as income from sources with-  
3 in the United States).

4 “(2) OVERALL DOMESTIC LOSS DEFINED.—For  
5 purposes of this subsection—

6 “(A) IN GENERAL.—The term ‘overall do-  
7 mestic loss’ means any domestic loss to the ex-  
8 tent such loss offsets taxable income from  
9 sources without the United States for the tax-  
10 able year or for any preceding taxable year by  
11 reason of a carryback. For purposes of the pre-  
12 ceding sentence, the term ‘domestic loss’ means  
13 the amount by which the gross income for the  
14 taxable year from sources within the United  
15 States is exceeded by the sum of the deductions  
16 properly apportioned or allocated thereto (deter-  
17 mined without regard to any carryback from a  
18 subsequent taxable year).

19 “(B) TAXPAYER MUST HAVE ELECTED  
20 FOREIGN TAX CREDIT FOR YEAR OF LOSS.—  
21 The term ‘overall domestic loss’ shall not in-  
22 clude any loss for any taxable year unless the  
23 taxpayer chose the benefits of this subpart for  
24 such taxable year.

1           “(3) CHARACTERIZATION OF SUBSEQUENT IN-  
2 COME.—

3           “(A) IN GENERAL.—Any income from  
4 sources within the United States that is treated  
5 as income from sources without the United  
6 States under paragraph (1) shall be allocated  
7 among and increase the income categories in  
8 proportion to the loss from sources within the  
9 United States previously allocated to those in-  
10 come categories.

11           “(B) INCOME CATEGORY.—For purposes of  
12 this paragraph, the term ‘income category’ has  
13 the meaning given such term by subsection  
14 (f)(5)(E)(i).

15           “(4) COORDINATION WITH SUBSECTION (f).—  
16 The Secretary shall prescribe such regulations as  
17 may be necessary to coordinate the provisions of this  
18 subsection with the provisions of subsection (f).”.

19 (b) CONFORMING AMENDMENTS.—

20           (1) Section 535(d)(2) is amended by striking  
21 “section 904(g)(6)” and inserting “section  
22 904(h)(6)”.

23           (2) Subparagraph (A) of section 936(a)(2) is  
24 amended by striking “section 904(f)” and inserting  
25 “subsections (f) and (g) of section 904”.



1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to losses for taxable years begin-  
 3 ning after December 31, 2006.

4 **SEC. 205. INTEREST EXPENSE ALLOCATION RULES.**

5 (a) ELECTION TO ALLOCATE ON WORLDWIDE  
 6 BASIS.—Section 864 is amended by redesignating sub-  
 7 section (f) as subsection (g) and by inserting after sub-  
 8 section (e) the following new subsection:

9 “(f) ELECTION TO ALLOCATE INTEREST, ETC. ON  
 10 WORLDWIDE BASIS.—For purposes of this subchapter, at  
 11 the election of the worldwide affiliated group—

12 “(1) ALLOCATION AND APPORTIONMENT OF IN-  
 13 TEREST EXPENSE.—

14 “(A) IN GENERAL.—The taxable income of  
 15 each domestic corporation which is a member of  
 16 a worldwide affiliated group shall be determined  
 17 by allocating and apportioning interest expense  
 18 of each member as if all members of such group  
 19 were a single corporation.

20 “(B) TREATMENT OF WORLDWIDE AFFILI-  
 21 ATED GROUP.—The taxable income of the do-  
 22 mestic members of a worldwide affiliated group  
 23 from sources outside the United States shall be  
 24 determined by allocating and apportioning the  
 25 interest expense of such domestic members to

1           such income in an amount equal to the excess  
2           (if any) of—

3                   “(i) the total interest expense of the  
4                   worldwide affiliated group multiplied by  
5                   the ratio which the foreign assets of the  
6                   worldwide affiliated group bears to all the  
7                   assets of the worldwide affiliated group,  
8                   over

9                   “(ii) the interest expense of all foreign  
10                  corporations which are members of the  
11                  worldwide affiliated group to the extent  
12                  such interest expense of such foreign cor-  
13                  porations would have been allocated and  
14                  apportioned to foreign source income if  
15                  this subsection were applied to a group  
16                  consisting of all the foreign corporations in  
17                  such worldwide affiliated group.

18                  “(C) WORLDWIDE AFFILIATED GROUP.—  
19                  For purposes of this paragraph, the term  
20                  ‘worldwide affiliated group’ means a group con-  
21                  sisting of—

22                   “(i) the includible members of an af-  
23                   filiated group (as defined in section  
24                   1504(a), determined without regard to

1 paragraphs (2) and (4) of section  
2 1504(b)), and

3 “(ii) all controlled foreign corpora-  
4 tions in which such members in the aggre-  
5 gate meet the ownership requirements of  
6 section 1504(a)(2) either directly or indi-  
7 rectly through applying paragraph (2) of  
8 section 958(a) or through applying rules  
9 similar to the rules of such paragraph to  
10 stock owned directly or indirectly by do-  
11 mestic partnerships, trusts, or estates.

12 “(2) ALLOCATION AND APPORTIONMENT OF  
13 OTHER EXPENSES.—Expenses other than interest  
14 which are not directly allocable or apportioned to  
15 any specific income producing activity shall be allo-  
16 cated and apportioned as if all members of the affili-  
17 ated group were a single corporation. For purposes  
18 of the preceding sentence, the term ‘affiliated group’  
19 has the meaning given such term by section 1504  
20 (determined without regard to paragraph (4) of sec-  
21 tion 1504(b)).

22 “(3) TREATMENT OF TAX-EXEMPT ASSETS;  
23 BASIS OF STOCK IN NONAFFILIATED 10-PERCENT  
24 OWNED CORPORATIONS.—The rules of paragraphs  
25 (3) and (4) of subsection (e) shall apply for purposes

1 of this subsection, except that paragraph (4) shall be  
2 applied on a worldwide affiliated group basis.

3 “(4) TREATMENT OF CERTAIN FINANCIAL IN-  
4 STITUTIONS.—

5 “(A) IN GENERAL.—For purposes of para-  
6 graph (1), any corporation described in sub-  
7 paragraph (B) shall be treated as an includible  
8 corporation for purposes of section 1504 only  
9 for purposes of applying this subsection sepa-  
10 rately to corporations so described.

11 “(B) DESCRIPTION.—A corporation is de-  
12 scribed in this subparagraph if—

13 “(i) such corporation is a financial in-  
14 stitution described in section 581 or 591,

15 “(ii) the business of such financial in-  
16 stitution is predominantly with persons  
17 other than related persons (within the  
18 meaning of subsection (d)(4)) or their cus-  
19 tomers, and

20 “(iii) such financial institution is re-  
21 quired by State or Federal law to be oper-  
22 ated separately from any other entity  
23 which is not such an institution.

1           “(C) TREATMENT OF BANK AND FINAN-  
2           CIAL HOLDING COMPANIES.—To the extent pro-  
3           vided in regulations—

4                   “(i) a bank holding company (within  
5                   the meaning of section 2(a) of the Bank  
6                   Holding Company Act of 1956 (12 U.S.C.  
7                   1841(a)),

8                   “(ii) a financial holding company  
9                   (within the meaning of section 2(p) of the  
10                  Bank Holding Company Act of 1956 (12  
11                  U.S.C. 1841(p)), and

12                  “(iii) any subsidiary of a financial in-  
13                  stitution described in section 581 or 591,  
14                  or of any such bank or financial holding  
15                  company, if such subsidiary is predomi-  
16                  nantly engaged (directly or indirectly) in  
17                  the active conduct of a banking, financing,  
18                  or similar business,

19                  shall be treated as a corporation described in  
20                  subparagraph (B).

21           “(5) ELECTION TO EXPAND FINANCIAL INSTI-  
22           TUTION GROUP OF WORLDWIDE GROUP.—

23                   “(A) IN GENERAL.—If a worldwide affili-  
24                  ated group elects the application of this sub-  
25                  section, all financial corporations which—

1 “(i) are members of such worldwide  
2 affiliated group, but

3 “(ii) are not corporations described in  
4 paragraph (4)(B),

5 shall be treated as described in paragraph  
6 (4)(B) for purposes of applying paragraph  
7 (4)(A). This subsection (other than this para-  
8 graph) shall apply to any such group in the  
9 same manner as this subsection (other than this  
10 paragraph) applies to the pre-election worldwide  
11 affiliated group of which such group is a part.

12 “(B) FINANCIAL CORPORATION.—For pur-  
13 poses of this paragraph, the term ‘financial cor-  
14 poration’ means any corporation if at least 80  
15 percent of its gross income is income described  
16 in section 904(d)(2)(C)(ii) and the regulations  
17 thereunder which is derived from transactions  
18 with persons who are not related (within the  
19 meaning of section 267(b) or 707(b)(1)) to the  
20 corporation. For purposes of the preceding sen-  
21 tence, there shall be disregarded any item of in-  
22 come or gain from a transaction or series of  
23 transactions a principal purpose of which is the  
24 qualification of any corporation as a financial  
25 corporation.

1           “(C) ANTIABUSE RULES.—In the case of a  
2           corporation which is a member of an electing fi-  
3           nancial institution group, to the extent that  
4           such corporation—

5                   “(i) distributes dividends or makes  
6                   other distributions with respect to its stock  
7                   after the date of the enactment of this  
8                   paragraph to any member of the pre-elec-  
9                   tion worldwide affiliated group (other than  
10                  to a member of the electing financial insti-  
11                  tution group) in excess of the greater of—

12                           “(I) its average annual dividend  
13                           (expressed as a percentage of current  
14                           earnings and profits) during the 5-  
15                           taxable-year period ending with the  
16                           taxable year preceding the taxable  
17                           year, or

18                                   “(II) 25 percent of its average  
19                                   annual earnings and profits for such  
20                                   5-taxable-year period, or

21                           “(ii) deals with any person in any  
22                           manner not clearly reflecting the income of  
23                           the corporation (as determined under prin-  
24                           ciples similar to the principles of section  
25                           482),

1 an amount of indebtedness of the electing fi-  
2 nancial institution group equal to the excess  
3 distribution or the understatement or overstate-  
4 ment of income, as the case may be, shall be re-  
5 characterized (for the taxable year and subse-  
6 quent taxable years) for purposes of this para-  
7 graph as indebtedness of the worldwide affili-  
8 ated group (excluding the electing financial in-  
9 stitution group). If a corporation has not been  
10 in existence for 5 taxable years, this subpara-  
11 graph shall be applied with respect to the pe-  
12 riod it was in existence.

13 “(D) ELECTION.—An election under this  
14 paragraph with respect to any financial institu-  
15 tion group may be made only by the common  
16 parent of the pre-election worldwide affiliated  
17 group and may be made only for the first tax-  
18 able year beginning after December 31, 2008,  
19 in which such affiliated group includes 1 or  
20 more financial corporations. Such an election,  
21 once made, shall apply to all financial corpora-  
22 tions which are members of the electing finan-  
23 cial institution group for such taxable year and  
24 all subsequent years unless revoked with the  
25 consent of the Secretary.



1                   “(E)     DEFINITIONS     RELATING     TO  
2                   GROUPS.—For purposes of this paragraph—

3                   “(i)   PRE-ELECTION   WORLDWIDE   AF-  
4                   FILATED   GROUP.—The term ‘pre-election  
5                   worldwide affiliated group’ means, with re-  
6                   spect to a corporation, the worldwide affili-  
7                   ated group of which such corporation  
8                   would (but for an election under this para-  
9                   graph) be a member for purposes of apply-  
10                  ing paragraph (1).

11                  “(ii)   ELECTING   FINANCIAL   INSTITU-  
12                  TION GROUP.—The term ‘electing financial  
13                  institution group’ means the group of cor-  
14                  porations to which this subsection applies  
15                  separately by reason of the application of  
16                  paragraph (4)(A) and which includes fi-  
17                  nancial corporations by reason of an elec-  
18                  tion under subparagraph (A).

19                  “(F)   REGULATIONS.—The Secretary shall  
20                  prescribe such regulations as may be appro-  
21                  priate to carry out this subsection, including  
22                  regulations—

23                  “(i)   providing for the direct allocation  
24                  of interest expense in other circumstances  
25                  where such allocation would be appropriate

1 to carry out the purposes of this sub-  
2 section,

3 “(ii) preventing assets or interest ex-  
4 pense from being taken into account more  
5 than once, and

6 “(iii) dealing with changes in mem-  
7 bers of any group (through acquisitions or  
8 otherwise) treated under this paragraph as  
9 an affiliated group for purposes of this  
10 subsection.

11 “(6) ELECTION.—An election to have this sub-  
12 section apply with respect to any worldwide affiliated  
13 group may be made only by the common parent of  
14 the domestic affiliated group referred to in para-  
15 graph (1)(C) and may be made only for the first  
16 taxable year beginning after December 31, 2008, in  
17 which a worldwide affiliated group exists which in-  
18 cludes such affiliated group and at least 1 foreign  
19 corporation. Such an election, once made, shall apply  
20 to such common parent and all other corporations  
21 which are members of such worldwide affiliated  
22 group for such taxable year and all subsequent years  
23 unless revoked with the consent of the Secretary.”.

24 (b) EXPANSION OF REGULATORY AUTHORITY.—  
25 Paragraph (7) of section 864(e) is amended—

1           (1) by inserting before the comma at the end of  
 2           subparagraph (B) “and in other circumstances  
 3           where such allocation would be appropriate to carry  
 4           out the purposes of this subsection”, and

5           (2) by striking “and” at the end of subpara-  
 6           graph (E), by redesignating subparagraph (F) as  
 7           subparagraph (G), and by inserting after subpara-  
 8           graph (E) the following new subparagraph:

9                   “(F) preventing assets or interest expense  
 10                  from being taken into account more than once,  
 11                  and”.

12          (c) EFFECTIVE DATE.—The amendments made by  
 13          this section shall apply to taxable years beginning after  
 14          December 31, 2008.

15   **SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLD-**  
 16                   **ING COMPANY INCOME WITH RESPECT TO**  
 17                   **TRANSACTIONS IN COMMODITIES.**

18          (a) IN GENERAL.—Clauses (i) and (ii) of section  
 19          954(c)(1)(C) (relating to commodity transactions) are  
 20          amended to read as follows:

21                   “(i) arise out of commodity hedging  
 22                   transactions (as defined in paragraph  
 23                   (4)(A)),

24                   “(ii) are active business gains or  
 25                   losses from the sale of commodities, but

1                   only if substantially all of the controlled  
 2                   foreign corporation's commodities are  
 3                   property described in paragraph (1), (2),  
 4                   or (8) of section 1221(a), or''.

5           (b) DEFINITION AND SPECIAL RULES.—Subsection  
 6 (c) of section 954 is amended by adding after paragraph  
 7 (3) the following new paragraph:

8                   “(4) DEFINITION AND SPECIAL RULES RELAT-  
 9           ING TO COMMODITY TRANSACTIONS.—

10                   “(A) COMMODITY HEDGING TRANS-  
 11           ACTIONS.—For purposes of paragraph  
 12           (1)(C)(i), the term ‘commodity hedging trans-  
 13           action’ means any transaction with respect to a  
 14           commodity if such transaction—

15                   “(i) is a hedging transaction as de-  
 16           fined in section 1221(b)(2), determined—

17                   “(I) without regard to subpara-  
 18           graph (A)(ii) thereof,

19                   “(II) by applying subparagraph  
 20           (A)(i) thereof by substituting ‘ordi-  
 21           nary property or property described in  
 22           section 1231(b)’ for ‘ordinary prop-  
 23           erty’, and

1 “(III) by substituting ‘controlled  
2 foreign corporation’ for ‘taxpayer’  
3 each place it appears, and

4 “(ii) is clearly identified as such in ac-  
5 cordance with section 1221(a)(7).

6 “(B) TREATMENT OF DEALER ACTIVITIES  
7 UNDER PARAGRAPH (1)(C).—Commodities with  
8 respect to which gains and losses are not taken  
9 into account under paragraph (2)(C) in com-  
10 puting a controlled foreign corporation’s foreign  
11 personal holding company income shall not be  
12 taken into account in applying the substantially  
13 all test under paragraph (1)(C)(ii) to such cor-  
14 poration.

15 “(C) REGULATIONS.—The Secretary shall  
16 prescribe such regulations as are appropriate to  
17 carry out the purposes of paragraph (1)(C) in  
18 the case of transactions involving related par-  
19 ties.”.

20 (c) MODIFICATION OF EXCEPTION FOR DEALERS.—  
21 Clause (i) of section 954(c)(2)(C) is amended by inserting  
22 “and transactions involving physical settlement” after  
23 “(including hedging transactions”.

1 (d) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to transactions entered into after  
 3 December 31, 2004.

4 **Subtitle B—International Tax**  
 5 **Simplification**

6 **SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COM-**  
 7 **PANY RULES AND FOREIGN INVESTMENT**  
 8 **COMPANY RULES.**

9 (a) GENERAL RULE.—The following provisions are  
 10 hereby repealed:

11 (1) Part III of subchapter G of chapter 1 (re-  
 12 lating to foreign personal holding companies).

13 (2) Section 1246 (relating to gain on foreign in-  
 14 vestment company stock).

15 (3) Section 1247 (relating to election by foreign  
 16 investment companies to distribute income cur-  
 17 rently).

18 (b) EXEMPTION OF FOREIGN CORPORATIONS FROM  
 19 PERSONAL HOLDING COMPANY RULES.—

20 (1) IN GENERAL.—Subsection (c) of section  
 21 542 (relating to exceptions) is amended—

22 (A) by striking paragraph (5) and insert-  
 23 ing the following:

24 “(5) a foreign corporation,”

1 (B) by striking paragraphs (7) and (10)  
2 and by redesignating paragraphs (8) and (9) as  
3 paragraphs (7) and (8), respectively,

4 (C) by inserting “and” at the end of para-  
5 graph (7) (as so redesignated), and

6 (D) by striking “; and” at the end of para-  
7 graph (8) (as so redesignated) and inserting a  
8 period.

9 (2) TREATMENT OF INCOME FROM PERSONAL  
10 SERVICE CONTRACTS.—Paragraph (1) of section  
11 954(c) is amended by adding at the end the fol-  
12 lowing new subparagraph:

13 “(I) PERSONAL SERVICE CONTRACTS.—

14 “(i) Amounts received under a con-  
15 tract under which the corporation is to fur-  
16 nish personal services if—

17 “(I) some person other than the  
18 corporation has the right to designate  
19 (by name or by description) the indi-  
20 vidual who is to perform the services,  
21 or

22 “(II) the individual who is to per-  
23 form the services is designated (by  
24 name or by description) in the con-  
25 tract, and

1 “(ii) amounts received from the sale  
2 or other disposition of such a contract.

3 This subparagraph shall apply with respect to  
4 amounts received for services under a particular  
5 contract only if at some time during the taxable  
6 year 25 percent or more in value of the out-  
7 standing stock of the corporation is owned, di-  
8 rectly or indirectly, by or for the individual who  
9 has performed, is to perform, or may be des-  
10 ignated (by name or by description) as the one  
11 to perform, such services.”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) Section 1(h) is amended—

14 (A) in paragraph (10), by inserting “and”  
15 at the end of subparagraph (F), by striking  
16 subparagraph (G), and by redesignating sub-  
17 paragraph (H) as subparagraph (G), and

18 (B) by striking “a foreign personal holding  
19 company (as defined in section 552), a foreign  
20 investment company (as defined in section  
21 1246(b)), or” in paragraph (11)(C)(iii).

22 (2) Section 163(e)(3)(B), as amended by sec-  
23 tion 453(a) of this Act, is amended by striking  
24 “which is a foreign personal holding company (as  
25 defined in section 552), a controlled foreign corpora-



1       tion (as defined in section 957), or” and inserting  
2       “which is a controlled foreign corporation (as de-  
3       fined in section 957) or”.

4               (3) Paragraph (2) of section 171(c) is amend-  
5       ed—

6                       (A) by striking “, or by a foreign personal  
7                       holding company, as defined in section 552”,  
8                       and

9                       (B) by striking “, or foreign personal hold-  
10                      ing company”.

11               (4) Paragraph (2) of section 245(a) is amended  
12       by striking “foreign personal holding company or”.

13               (5) Section 267(a)(3)(B), as amended by sec-  
14       tion 453(a) of this Act, is amended by striking “to  
15       a foreign personal holding company (as defined in  
16       section 552), a controlled foreign corporation (as de-  
17       fined in section 957), or” and inserting “to a con-  
18       trolled foreign corporation (as defined in section  
19       957) or”.

20               (6) Section 312 is amended by striking sub-  
21       section (j).

22               (7) Subsection (m) of section 312 is amended  
23       by striking “, a foreign investment company (within  
24       the meaning of section 1246(b)), or a foreign per-

1       sonal holding company (within the meaning of sec-  
2       tion 552)’’.

3           (8) Subsection (e) of section 443 is amended by  
4       striking paragraph (3) and by redesignating para-  
5       graphs (4) and (5) as paragraphs (3) and (4), re-  
6       spectively.

7           (9) Subparagraph (B) of section 465(c)(7) is  
8       amended by adding “or” at the end of clause (i), by  
9       striking clause (ii), and by redesignating clause (iii)  
10      as clause (ii).

11          (10) Paragraph (1) of section 543(b) is amend-  
12      ed by inserting “and” at the end of subparagraph  
13      (A), by striking “, and” at the end of subparagraph  
14      (B) and inserting a period, and by striking subpara-  
15      graph (C).

16          (11) Paragraph (1) of section 562(b) is amend-  
17      ed by striking “or a foreign personal holding com-  
18      pany described in section 552”.

19          (12) Section 563 is amended—

20              (A) by striking subsection (c),

21              (B) by redesignating subsection (d) as sub-  
22      section (c), and

23              (C) by striking “subsection (a), (b), or (c)”  
24      in subsection (c) (as so redesignated) and in-  
25      serting “subsection (a) or (b)”.

1           (13) Subsection (d) of section 751 is amended  
2           by adding “and” at the end of paragraph (2), by  
3           striking paragraph (3), by redesignating paragraph  
4           (4) as paragraph (3), and by striking “paragraph  
5           (1), (2), or (3)” in paragraph (3) (as so redesign-  
6           ated) and inserting “paragraph (1) or (2)”.

7           (14) Paragraph (2) of section 864(d) is amend-  
8           ed by striking subparagraph (A) and by redesign-  
9           ating subparagraphs (B) and (C) as subparagraphs  
10          (A) and (B), respectively.

11          (15)(A) Subparagraph (A) of section 898(b)(1)  
12          is amended to read as follows:

13               “(A) which is treated as a controlled for-  
14               eign corporation for any purpose under subpart  
15               F of part III of this subchapter, and”.

16          (B) Subparagraph (B) of section 898(b)(2) is  
17          amended by striking “and sections 551(f) and 554,  
18          whichever are applicable,”.

19          (C) Paragraph (3) of section 898(b) is amended  
20          to read as follows:

21               “(3) UNITED STATES SHAREHOLDER.—The  
22               term ‘United States shareholder’ has the meaning  
23               given to such term by section 951(b), except that, in  
24               the case of a foreign corporation having related per-  
25               son insurance income (as defined in section

1       953(c)(2)), the Secretary may treat any person as a  
 2       United States shareholder for purposes of this sec-  
 3       tion if such person is treated as a United States  
 4       shareholder under section 953(c)(1).”.

5               (D) Subsection (c) of section 898 is amended to  
 6       read as follows:

7       “(c) DETERMINATION OF REQUIRED YEAR.—

8               “(1) IN GENERAL.—The required year is—

9                       “(A) the majority U.S. shareholder year,  
 10                      or

11                     “(B) if there is no majority U.S. share-  
 12                     holder year, the taxable year prescribed under  
 13                     regulations.

14               “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-  
 15       fied foreign corporation may elect, in lieu of the tax-  
 16       able year under paragraph (1)(A), a taxable year be-  
 17       ginning 1 month earlier than the majority U.S.  
 18       shareholder year.

19               “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

20                     “(A) IN GENERAL.—For purposes of this  
 21                     subsection, the term ‘majority U.S. shareholder  
 22                     year’ means the taxable year (if any) which, on  
 23                     each testing day, constituted the taxable year  
 24                     of—

1 “(i) each United States shareholder  
2 described in subsection (b)(2)(A), and

3 “(ii) each United States shareholder  
4 not described in clause (i) whose stock was  
5 treated as owned under subsection  
6 (b)(2)(B) by any shareholder described in  
7 such clause.

8 “(B) TESTING DAY.—The testing days  
9 shall be—

10 “(i) the first day of the corporation’s  
11 taxable year (determined without regard to  
12 this section), or

13 “(ii) the days during such representa-  
14 tive period as the Secretary may pre-  
15 scribe.”.

16 (16) Clause (ii) of section 904(d)(2)(A) is  
17 amended to read as follows:

18 “(ii) CERTAIN AMOUNTS INCLUDED.—  
19 Except as provided in clause (iii), the term  
20 ‘passive income’ includes, except as pro-  
21 vided in subparagraph (E)(iii) or para-  
22 graph (3)(I), any amount includible in  
23 gross income under section 1293 (relating  
24 to certain passive foreign investment com-  
25 panies).”.

1           (17)(A) Subparagraph (A) of section 904(g)(1),  
2           as redesignated by section 204, is amended by add-  
3           ing “or” at the end of clause (i), by striking clause  
4           (ii), and by redesignating clause (iii) as clause (ii).

5           (B) The paragraph heading of paragraph (2) of  
6           section 904(g), as so redesignated, is amended by  
7           striking “FOREIGN PERSONAL HOLDING OR”.

8           (18) Section 951 is amended by striking sub-  
9           sections (c) and (d) and by redesignating subsections  
10          (e) and (f) as subsections (c) and (d), respectively.

11          (19) Paragraph (3) of section 989(b) is amend-  
12          ed by striking “, 551(a),”.

13          (20) Paragraph (5) of section 1014(b) is  
14          amended by inserting “and before January 1,  
15          2005,” after “August 26, 1937,”.

16          (21) Subsection (a) of section 1016 is amended  
17          by striking paragraph (13).

18          (22)(A) Paragraph (3) of section 1212(a) is  
19          amended to read as follows:

20               “(3) SPECIAL RULES ON CARRYBACKS.—A net  
21               capital loss of a corporation shall not be carried  
22               back under paragraph (1)(A) to a taxable year—

23                       “(A) for which it is a regulated investment  
24                       company (as defined in section 851), or

1           “(B) for which it is a real estate invest-  
2           ment trust (as defined in section 856).”.

3           (B) The amendment made by subparagraph (A)  
4           shall apply to taxable years beginning after Decem-  
5           ber 31, 2004.

6           (23) Section 1223 is amended by striking para-  
7           graph (10) and by redesignating the following para-  
8           graphs accordingly.

9           (24) Subsection (d) of section 1248 is amended  
10          by striking paragraph (5) and by redesignating  
11          paragraphs (6) and (7) as paragraphs (5) and (6),  
12          respectively.

13          (25) Paragraph (2) of section 1260(c) is  
14          amended by striking subparagraphs (H) and (I) and  
15          by redesignating subparagraph (J) as subparagraph  
16          (H).

17          (26)(A) Subparagraph (F) of section  
18          1291(b)(3) is amended by striking “551(d), 959(a),”  
19          and inserting “959(a)”.

20          (B) Subsection (e) of section 1291 is amended  
21          by inserting “(as in effect on the day before the date  
22          of the enactment of the Jumpstart Our Business  
23          Strength (JOBS) Act)” after “section 1246”.

24          (27) Paragraph (2) of section 1294(a) is  
25          amended to read as follows:

1           “(2) ELECTION NOT PERMITTED WHERE  
2           AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION  
3           951.—The taxpayer may not make an election under  
4           paragraph (1) with respect to the undistributed  
5           PFIC earnings tax liability attributable to a quali-  
6           fied electing fund for the taxable year if any amount  
7           is includible in the gross income of the taxpayer  
8           under section 951 with respect to such fund for such  
9           taxable year.”.

10           (28) Section 6035 is hereby repealed.

11           (29) Subparagraph (D) of section 6103(e)(1) is  
12           amended by striking clause (iv) and redesignating  
13           clauses (v) and (vi) as clauses (iv) and (v), respec-  
14           tively.

15           (30) Subparagraph (B) of section 6501(e)(1) is  
16           amended to read as follows:

17                   “(B) CONSTRUCTIVE DIVIDENDS.—If the  
18           taxpayer omits from gross income an amount  
19           properly includible therein under section  
20           951(a), the tax may be assessed, or a pro-  
21           ceeding in court for the collection of such tax  
22           may be done without assessing, at any time  
23           within 6 years after the return was filed.”.

24           (31) Subsection (a) of section 6679 is amend-  
25           ed—



1 (A) by striking “6035, 6046, and 6046A”  
2 in paragraph (1) and inserting “6046 and  
3 6046A”, and

4 (B) by striking paragraph (3).

5 (32) Sections 170(f)(10)(A), 508(d), 4947, and  
6 4948(c)(4) are each amended by striking  
7 “556(b)(2),” each place it appears.

8 (33) The table of parts for subchapter G of  
9 chapter 1 is amended by striking the item relating  
10 to part III.

11 (34) The table of sections for part IV of sub-  
12 chapter P of chapter 1 is amended by striking the  
13 items relating to sections 1246 and 1247.

14 (35) The table of sections for subpart A of part  
15 III of subchapter A of chapter 61 is amended by  
16 striking the item relating to section 6035.

17 (d) EFFECTIVE DATES.—

18 (1) IN GENERAL.—Except as provided in para-  
19 graph (2), the amendments made by this section  
20 shall apply to taxable years of foreign corporations  
21 beginning after December 31, 2004, and to taxable  
22 years of United States shareholders with or within  
23 which such taxable years of foreign corporations  
24 end.

1           (2) SUBSECTION (c)(29).—The amendments  
 2       made by subsection (c)(29) shall apply to disclosures  
 3       of return or return information with respect to tax-  
 4       able years beginning after December 31, 2004.

5 **SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUB-**  
 6 **PART F.**

7       (a) IN GENERAL.—Clause (ii) of section  
 8 954(b)(3)(A) (relating to de minimis, etc., rules) is  
 9 amended by striking “\$1,000,000” and inserting  
 10 “\$5,000,000”.

11       (b) TECHNICAL AMENDMENTS.—

12           (1) Clause (ii) of section 864(d)(5)(A) is  
 13 amended by striking “\$1,000,000” and inserting  
 14 “\$5,000,000”.

15           (2) Clause (i) of section 881(c)(5)(A) is amend-  
 16 ed by striking “\$1,000,000” and inserting  
 17 “\$5,000,000”.

18       (c) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to taxable years of foreign corpora-  
 20 tions beginning after December 31, 2004, and to taxable  
 21 years of United States shareholders with or within which  
 22 such taxable years of foreign corporations end.

1 **SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH**  
2 **PARTNERSHIPS TO APPLY IN DETERMINING**  
3 **SECTION 902 AND 960 CREDITS.**

4 (a) IN GENERAL.—Subsection (c) of section 902 is  
5 amended by redesignating paragraph (7) as paragraph (8)  
6 and by inserting after paragraph (6) the following new  
7 paragraph:

8 “(7) CONSTRUCTIVE OWNERSHIP THROUGH  
9 PARTNERSHIPS.—Stock owned, directly or indirectly,  
10 by or for a partnership shall be considered as being  
11 owned proportionately by its partners. Stock consid-  
12 ered to be owned by a person by reason of the pre-  
13 ceding sentence shall, for purposes of applying such  
14 sentence, be treated as actually owned by such per-  
15 son. The Secretary may prescribe such regulations  
16 as may be necessary to carry out the purposes of  
17 this paragraph, including rules to account for special  
18 partnership allocations of dividends, credits, and  
19 other incidents of ownership of stock in determining  
20 proportionate ownership.”.

21 (b) CLARIFICATION OF COMPARABLE ATTRIBUTION  
22 UNDER SECTION 901(b)(5).—Paragraph (5) of section  
23 901(b) is amended by striking “any individual” and in-  
24 serting “any person”.

25 (c) EFFECTIVE DATE.—The amendments made by  
26 this section shall apply to taxes of foreign corporations

1 for taxable years of such corporations beginning after the  
 2 date of the enactment of this Act.

3 **SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION**  
 4 **RULES TO FOREIGN PERSONS.**

5 (a) IN GENERAL.—Section 263A(c) (relating to ex-  
 6 ceptions) is amended by adding at the end the following  
 7 new paragraph:

8 “(7) FOREIGN PERSONS.—Except for purposes  
 9 of applying sections 871(b)(1) and 882(a)(1), this  
 10 section shall not apply to any taxpayer who is not  
 11 a United States person if such taxpayer capitalizes  
 12 costs of produced property or property acquired for  
 13 resale by applying the method used to ascertain the  
 14 income, profit, or loss for purposes of reports or  
 15 statements to shareholders, partners, other propri-  
 16 etors, or beneficiaries, or for credit purposes.”.

17 (b) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The amendment made by  
 19 subsection (a) shall apply to taxable years beginning  
 20 after December 31, 2004.

21 (2) CHANGE IN METHOD OF ACCOUNTING.—In  
 22 the case of any taxpayer required by the amendment  
 23 made by this section to change its method of ac-  
 24 counting for its first taxable year beginning after  
 25 December 31, 2004—

1 (A) such change shall be treated as initi-  
2 ated by the taxpayer,

3 (B) such change shall be treated as made  
4 with the consent of the Secretary of the Treas-  
5 ury, and

6 (C) the net amount of the adjustments re-  
7 quired to be taken into account by the taxpayer  
8 under section 481 of the Internal Revenue Code  
9 of 1986 shall be taken into account in such first  
10 year.

11 **SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**  
12 **FROM CERTAIN FOREIGN CORPORATIONS.**

13 (a) IN GENERAL.—Paragraph (2) of section 871(i)  
14 (relating to tax not to apply to certain interest and divi-  
15 dends) is amended by adding at the end the following new  
16 subparagraph:

17 “(D) Dividends paid by a foreign corpora-  
18 tion which are treated under section  
19 861(a)(2)(B) as income from sources within the  
20 United States.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to payments made after December  
23 31, 2004.

1 **SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON**  
 2 **ALIENS PRESENT IN THE UNITED STATES**  
 3 **FOR 183 DAYS OR MORE.**

4 (a) IN GENERAL.—Subsection (a) of section 871 is  
 5 amended by striking paragraph (2) and by redesignating  
 6 paragraph (3) as paragraph (2).

7 (b) CONFORMING AMENDMENT.—Section 1441(g) is  
 8 amended is amended by striking “section 871(a)(3)” and  
 9 inserting “section 871(a)(2)”.

10 (c) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to taxable years beginning after  
 12 December 31, 2003.

13 **Subtitle C—Additional**  
 14 **International Tax Provisions**

15 **SEC. 221. ACTIVE LEASING INCOME FROM AIRCRAFT AND**  
 16 **VESSELS.**

17 (a) IN GENERAL.—Section 954(c)(2) is amended by  
 18 adding at the end the following new subparagraph:

19 “(D) CERTAIN RENTS, ETC.—

20 “(i) IN GENERAL.—Foreign personal  
 21 holding company income shall not include  
 22 qualified leasing income derived from or in  
 23 connection with the leasing or rental of  
 24 any aircraft or vessel.

25 “(ii) QUALIFIED LEASING INCOME.—  
 26 For purposes of this subparagraph, the

1 term ‘qualified leasing income’ means rents  
 2 and gains derived in the active conduct of  
 3 a trade or business of leasing with respect  
 4 to which the controlled foreign corporation  
 5 conducts substantial activity, but only if—

6 “(I) the leased property is used  
 7 by the lessee or other end-user in for-  
 8 eign commerce and predominantly  
 9 outside the United States, and

10 “(II) the lessee or other end-user  
 11 is not a related person (as defined in  
 12 subsection (d)(3)).

13 Any amount not treated as foreign per-  
 14 sonal holding income under this subpara-  
 15 graph shall not be treated as foreign base  
 16 company shipping income.”.

17 (b) CONFORMING AMENDMENT.—Section  
 18 954(c)(1)(B) is amended by inserting “or (2)(D)” after  
 19 “paragraph (2)(A)”.

20 (c) EFFECTIVE DATE.—The amendments made by  
 21 this section shall apply to taxable years of foreign corpora-  
 22 tions beginning after December 31, 2005, and to taxable  
 23 years of United States shareholders with or within which  
 24 such taxable years of foreign corporations end.

1 **SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BE-**  
2 **TWEEN RELATED CONTROLLED FOREIGN**  
3 **CORPORATIONS UNDER FOREIGN PERSONAL**  
4 **HOLDING COMPANY INCOME RULES.**

5 (a) IN GENERAL.—Subsection (c) of section 954, as  
6 amended by this Act, is amended by adding after para-  
7 graph (4) the following new paragraph:

8 “(5) LOOK-THRU IN THE CASE OF RELATED  
9 CONTROLLED FOREIGN CORPORATIONS.—For pur-  
10 poses of this subsection, dividends, interest, rents,  
11 and royalties received or accrued from a controlled  
12 foreign corporation which is a related person (as de-  
13 fined in subsection (b)(9)) shall not be treated as  
14 foreign personal holding company income to the ex-  
15 tent attributable or properly allocable (determined  
16 under rules similar to the rules of subparagraphs  
17 (C) and (D) of section 904(d)(3)) to income of the  
18 related person which is not subpart F income (as de-  
19 fined in section 952). For purposes of this para-  
20 graph, interest shall include factoring income which  
21 is treated as income equivalent to interest for pur-  
22 poses of paragraph (1)(E). The Secretary shall pre-  
23 scribe such regulations as may be appropriate to  
24 prevent the abuse of the purposes of this para-  
25 graph.”.



1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to taxable years of foreign corpora-  
 3 tions beginning after December 31, 2004, and to taxable  
 4 years of United States shareholders with or within which  
 5 such taxable years of foreign corporations end.

6 **SEC. 223. LOOK-THRU TREATMENT FOR SALES OF PART-**  
 7 **NERSHIP INTERESTS.**

8 (a) IN GENERAL.—Section 954(c) (defining foreign  
 9 personal holding company income), as amended by this  
 10 Act, is amended by adding after paragraph (5) the fol-  
 11 lowing new paragraph:

12 “(6) LOOK-THRU RULE FOR CERTAIN PARTNER-  
 13 SHIP SALES.—

14 “(A) IN GENERAL.—In the case of any  
 15 sale by a controlled foreign corporation of an  
 16 interest in a partnership with respect to which  
 17 such corporation is a 25-percent owner, such  
 18 corporation shall be treated for purposes of this  
 19 subsection as selling the proportionate share of  
 20 the assets of the partnership attributable to  
 21 such interest. The Secretary shall prescribe  
 22 such regulations as may be appropriate to pre-  
 23 vent abuse of the purposes of this paragraph,  
 24 including regulations providing for coordination

1 of this paragraph with the provisions of sub-  
 2 chapter K.

3 “(B) 25-PERCENT OWNER.—For purposes  
 4 of this paragraph, the term ‘25-percent owner’  
 5 means a controlled foreign corporation which  
 6 owns directly 25 percent or more of the capital  
 7 or profits interest in a partnership. For pur-  
 8 poses of the preceding sentence, if a controlled  
 9 foreign corporation is a shareholder or partner  
 10 of a corporation or partnership, the controlled  
 11 foreign corporation shall be treated as owning  
 12 directly its proportionate share of any such cap-  
 13 ital or profits interest held directly or indirectly  
 14 by such corporation or partnership”.

15 (b) EFFECTIVE DATE.—The amendment made by  
 16 this section shall apply to taxable years of foreign corpora-  
 17 tions beginning after December 31, 2004, and to taxable  
 18 years of United States shareholders with or within which  
 19 such taxable years of foreign corporations end.

20 **SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE**  
 21 **RATE FOR FOREIGN TAX PAID OTHER THAN**  
 22 **IN FUNCTIONAL CURRENCY.**

23 (a) IN GENERAL.—Paragraph (1) of section 986(a)  
 24 (relating to determination of foreign taxes and foreign cor-  
 25 poration’s earnings and profits) is amended by redesign-

1 nating subparagraph (D) as subparagraph (E) and by in-  
 2 serting after subparagraph (C) the following new subpara-  
 3 graph:

4 “(D) ELECTIVE EXCEPTION FOR TAXES  
 5 PAID OTHER THAN IN FUNCTIONAL CUR-  
 6 RENCY.—

7 “(i) IN GENERAL.—At the election of  
 8 the taxpayer, subparagraph (A) shall not  
 9 apply to any foreign income taxes the li-  
 10 ability for which is denominated in any  
 11 currency other than in the taxpayer’s func-  
 12 tional currency.

13 “(ii) APPLICATION TO QUALIFIED  
 14 BUSINESS UNITS.—An election under this  
 15 subparagraph may apply to foreign income  
 16 taxes attributable to a qualified business  
 17 unit in accordance with regulations pre-  
 18 scribed by the Secretary.

19 “(iii) ELECTION.—Any such election  
 20 shall apply to the taxable year for which  
 21 made and all subsequent taxable years un-  
 22 less revoked with the consent of the Sec-  
 23 retary.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to taxable years beginning after  
 3 December 31, 2004.

4 **SEC. 225. TREATMENT OF INCOME TAX BASE DIFFERENCES.**

5 (a) IN GENERAL.—Paragraph (2) of section 904(d)  
 6 is amended by redesignating subparagraphs (H) and (I)  
 7 as subparagraphs (I) and (J), respectively, and by insert-  
 8 ing after subparagraph (G) the following new subpara-  
 9 graph:

10 “(H) TREATMENT OF INCOME TAX BASE  
 11 DIFFERENCES.—

12 “(i) IN GENERAL.—A taxpayer may  
 13 elect to treat tax imposed under the law of  
 14 a foreign country or possession of the  
 15 United States on an amount which does  
 16 not constitute income under United States  
 17 tax principles as tax imposed on income  
 18 described in subparagraph (C) or (I) of  
 19 paragraph (1).

20 “(ii) ELECTION IRREVOCABLE.—Any  
 21 such election shall apply to the taxable  
 22 year for which made and all subsequent  
 23 taxable years unless revoked with the con-  
 24 sent of the Secretary.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to taxable years ending after the  
 3 date of the enactment of this Act.

4 **SEC. 226. MODIFICATION OF EXCEPTIONS UNDER SUBPART**  
 5 **F FOR ACTIVE FINANCING.**

6 (a) IN GENERAL.—Section 954(h)(3) is amended by  
 7 adding at the end the following:

8 “(E) DIRECT CONDUCT OF ACTIVITIES.—  
 9 For purposes of subparagraph (A)(ii)(II), an  
 10 activity shall be treated as conducted directly by  
 11 an eligible controlled foreign corporation or  
 12 qualified business unit in its home country if  
 13 the activity is performed by employees of a re-  
 14 lated person and—

15 “(i) the related person is an eligible  
 16 controlled foreign corporation the home  
 17 country of which is the same as the home  
 18 country of the corporation or unit to which  
 19 subparagraph (A)(ii)(II) is being applied,

20 “(ii) the activity is performed in the  
 21 home country of the related person, and

22 “(iii) the related person is com-  
 23 pensated on an arm’s-length basis for the  
 24 performance of the activity by its employ-  
 25 ees and such compensation is treated as

1           earned by such person in its home country  
 2           for purposes of the home country's tax  
 3           laws.'".

4           (b) **EFFECTIVE DATE.**—The amendment made by  
 5 this section shall apply to taxable years of such foreign  
 6 corporations beginning after December 31, 2004, and to  
 7 taxable years of United States shareholders with or within  
 8 which such taxable years of such foreign corporations end.

9   **SEC. 227. UNITED STATES PROPERTY NOT TO INCLUDE**  
 10                   **CERTAIN ASSETS OF CONTROLLED FOREIGN**  
 11                   **CORPORATION.**

12           (a) **IN GENERAL.**—Section 956(c)(2) (relating to ex-  
 13 ceptions from property treated as United States property)  
 14 is amended by striking “and” at the end of subparagraph  
 15 (J), by striking the period at the end of subparagraph (K)  
 16 and inserting a semicolon, and by adding at the end the  
 17 following new subparagraphs:

18                   “(L) securities acquired and held by a con-  
 19 trolled foreign corporation in the ordinary  
 20 course of its business as a dealer in securities  
 21 if—

22                           “(i) the dealer accounts for the securi-  
 23 ties as securities held primarily for sale to  
 24 customers in the ordinary course of busi-  
 25 ness, and

1 “(ii) the dealer disposes of the securi-  
 2 ties (or such securities mature while held  
 3 by the dealer) within a period consistent  
 4 with the holding of securities for sale to  
 5 customers in the ordinary course of busi-  
 6 ness; and

7 “(M) an obligation of a United States per-  
 8 son which—

9 “(i) is not a domestic corporation, and

10 “(ii) is not—

11 “(I) a United States shareholder  
 12 (as defined in section 951(b)) of the  
 13 controlled foreign corporation, or

14 “(II) a partnership, estate, or  
 15 trust in which the controlled foreign  
 16 corporation, or any related person (as  
 17 defined in section 954(d)(3)), is a  
 18 partner, beneficiary, or trustee imme-  
 19 diately after the acquisition of any ob-  
 20 ligation of such partnership, estate, or  
 21 trust by the controlled foreign cor-  
 22 poration.”.

23 (b) CONFORMING AMENDMENT.—Section 956(c)(2)  
 24 is amended by striking “and (K)” in the last sentence and  
 25 inserting “, (K), and (L)”.

1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to taxable years of foreign corpora-  
 3 tions beginning after December 31, 2004, and to taxable  
 4 years of United States shareholders with or within which  
 5 such taxable years of foreign corporations end.

6 **SEC. 228. PROVIDE EQUAL TREATMENT FOR INTEREST**  
 7 **PAID BY FOREIGN PARTNERSHIPS AND FOR-**  
 8 **EIGN CORPORATIONS.**

9 (a) IN GENERAL.—Paragraph (1) of section 861(a)  
 10 is amended by striking “and” at the end of subparagraph  
 11 (A), by striking the period at the end of subparagraph  
 12 (B) and inserting “, and”, and by adding at the end the  
 13 following new subparagraph:

14 “(C) in the case of a foreign partnership,  
 15 which is predominantly engaged in the active  
 16 conduct of a trade or business outside the  
 17 United States, any interest not paid by a trade  
 18 or business engaged in by the partnership in  
 19 the United States and not allocable to income  
 20 which is effectively connected (or treated as ef-  
 21 fectively connected) with the conduct of a trade  
 22 or business in the United States.”.

23 (b) EFFECTIVE DATE.—The amendments made by  
 24 this section shall apply to taxable years beginning after  
 25 December 31, 2003.



1 **SEC. 229. CLARIFICATION OF TREATMENT OF CERTAIN**  
2 **TRANSFERS OF INTANGIBLE PROPERTY.**

3 (a) IN GENERAL.—Subparagraph (C) of section  
4 367(d)(2) is amended by adding at the end the following  
5 new sentence: “For purposes of applying section 904(d),  
6 any such amount shall be treated in the same manner as  
7 if such amount were a royalty.”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to amounts treated as received pur-  
10 suant to section 367(d)(2) of the Internal Revenue Code  
11 of 1986 on or after August 5, 1997.

12 **SEC. 230. MODIFICATION OF THE TREATMENT OF CERTAIN**  
13 **REIT DISTRIBUTIONS ATTRIBUTABLE TO**  
14 **GAIN FROM SALES OR EXCHANGES OF**  
15 **UNITED STATES REAL PROPERTY INTERESTS.**

16 (a) IN GENERAL.—Paragraph (1) of section 897(h)  
17 (relating to look-through of distributions) is amended by  
18 adding at the end the following new sentence: “Notwith-  
19 standing the preceding sentence, any distribution by a  
20 REIT with respect to any class of stock which is regularly  
21 traded on an established securities market located in the  
22 United States shall not be treated as gain recognized from  
23 the sale or exchange of a United States real property in-  
24 terest if the shareholder did not own more than 5 percent  
25 of such class of stock at any time during the taxable  
26 year.”.

1 (b) CONFORMING AMENDMENT.—Paragraph (3) of  
 2 section 857(b) (relating to capital gains) is amended by  
 3 adding at the end the following new subparagraph:

4 “(F) CERTAIN DISTRIBUTIONS.—In the  
 5 case of a shareholder of a real estate invest-  
 6 ment trust to whom section 897 does not apply  
 7 by reason of the second sentence of section  
 8 897(h)(1), the amount which would be included  
 9 in computing long-term capital gains for such  
 10 shareholder under subparagraph (B) or (D)  
 11 (without regard to this subparagraph)—

12 “(i) shall not be included in com-  
 13 puting such shareholder’s long-term capital  
 14 gains, and

15 “(ii) shall be included in such share-  
 16 holder’s gross income as a dividend from  
 17 the real estate investment trust.”.

18 (c) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to taxable years beginning after  
 20 the date of the enactment of this Act.

21 **SEC. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DIS-**  
 22 **TRIBUTION AMOUNT.**

23 (a) IN GENERAL.—Subpart F of part III of sub-  
 24 chapter N of chapter 1 is amended by adding at the end  
 25 the following new section:

1 **“SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOR-**  
 2 **EIGN DISTRIBUTION AMOUNT.**

3 “(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED  
 4 FOREIGN DISTRIBUTION AMOUNT.—If a corporation  
 5 elects the application of this section, a tax shall be im-  
 6 posed on the taxpayer in an amount equal to 5.25 percent  
 7 of—

8 “(1) the taxpayer’s excess qualified foreign dis-  
 9 tribution amount, and

10 “(2) the amount determined under section 78  
 11 which is attributable to such excess qualified foreign  
 12 distribution amount.

13 Such tax shall be imposed in lieu of the tax imposed under  
 14 section 11 or 55 on the amounts described in paragraphs  
 15 (1) and (2) for the taxable year.

16 “(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION  
 17 AMOUNT.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘excess qualified  
 19 foreign distribution amount’ means the excess (if  
 20 any) of—

21 “(A) the aggregate dividends received by  
 22 the taxpayer during the taxable year which  
 23 are—

24 “(i) from 1 or more corporations  
 25 which are controlled foreign corporations  
 26 in which the taxpayer is a United States

1 shareholder on the date such dividends are  
2 paid, and

3 “(ii) described in a domestic reinvest-  
4 ment plan which—

5 “(I) is approved by the tax-  
6 payer’s president, chief executive offi-  
7 cer, or comparable official before the  
8 payment of such dividends and subse-  
9 quently approved by the taxpayer’s  
10 board of directors, management com-  
11 mittee, executive committee, or similar  
12 body, and

13 “(II) provides for the reinvest-  
14 ment of such dividends in the United  
15 States (other than as payment for ex-  
16 ecutive compensation), including as a  
17 source for the funding of worker hir-  
18 ing and training, infrastructure, re-  
19 search and development, capital in-  
20 vestments, or the financial stabiliza-  
21 tion of the corporation for the pur-  
22 poses of job retention or creation, over

23 “(B) the base dividend amount.

24 “(2) BASE DIVIDEND AMOUNT.—The term  
25 ‘base dividend amount’ means an amount designated

1 under subsection (c)(7), but not less than the aver-  
2 age amount of dividends received during the fixed  
3 base period from 1 or more corporations which are  
4 controlled foreign corporations in which the taxpayer  
5 is a United States shareholder on the date such divi-  
6 dends are paid.

7 “(3) FIXED BASE PERIOD.—

8 “(A) IN GENERAL.—The term ‘fixed base  
9 period’ means each of 3 taxable years which are  
10 among the 5 most recent taxable years of the  
11 taxpayer ending on or before December 31,  
12 2002, determined by disregarding—

13 “(i) the 1 taxable year for which the  
14 taxpayer had the highest amount of divi-  
15 dends from 1 or more corporations which  
16 are controlled foreign corporations relative  
17 to the other 4 taxable years, and

18 “(ii) the 1 taxable year for which the  
19 taxpayer had the lowest amount of divi-  
20 dends from such corporations relative to  
21 the other 4 taxable years.

22 “(B) SHORTER PERIOD.—If the taxpayer  
23 has fewer than 5 taxable years ending on or be-  
24 fore December 31, 2002, then in lieu of apply-  
25 ing subparagraph (A), the fixed base period

1           shall include all the taxable years of the tax-  
2           payer ending on or before December 31, 2002.

3           “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
4 poses of this section—

5           “(1) DIVIDENDS.—The term ‘dividend’ has the  
6           meaning given such term by section 316, except that  
7           the term shall include amounts described in section  
8           951(a)(1)(B), but shall not include amounts de-  
9           scribed in sections 78 and 959.

10          “(2) CONTROLLED FOREIGN CORPORATIONS  
11          AND UNITED STATES SHAREHOLDERS.—The term  
12          ‘controlled foreign corporation’ has the meaning  
13          given such term by section 957(a) and the term  
14          ‘United States shareholder’ has the meaning given  
15          such term by section 951(b).

16          “(3) FOREIGN TAX CREDITS.—The amount of  
17          any income, war, profits, or excess profit taxes paid  
18          (or deemed paid under sections 902 and 960) or ac-  
19          crued by the taxpayer with respect to the excess  
20          qualified foreign distribution amount for which a  
21          credit would be allowable under section 901 in the  
22          absence of this section, shall be reduced by 85 per-  
23          cent. No deduction shall be allowed under this chap-  
24          ter for the portion of any tax for which credit is not  
25          allowable by reason of the preceding sentence.

1           “(4) FOREIGN TAX CREDIT LIMITATION.—For  
2       purposes of section 904, there shall be disregarded  
3       85 percent of—

4           “(A) the excess qualified foreign distribu-  
5       tion amount,

6           “(B) the amount determined under section  
7       78 which is attributable to such excess qualified  
8       foreign distribution amount, and

9           “(C) the amounts (including assets, gross  
10      income, and other relevant bases of apportion-  
11      ment) which are attributable to the excess  
12      qualified foreign distribution amount which  
13      would, determined without regard to this sec-  
14      tion, be used to apportion the expenses, losses,  
15      and deductions of the taxpayer under section  
16      861 and 864 in determining its taxable income  
17      from sources without the United States.

18      For purposes of applying subparagraph (C), the  
19      principles of section 864(e)(3)(A) shall apply.

20           “(5) TREATMENT OF ACQUISITIONS AND DIS-  
21      POSITIONS.—Rules similar to the rules of section  
22      41(f)(3) shall apply in the case of acquisitions or  
23      dispositions of controlled foreign corporations occur-  
24      ring on or after the first day of the earliest taxable

1 year taken into account in determining the fixed  
2 base period.

3 “(6) TREATMENT OF CONSOLIDATED  
4 GROUPS.—Members of an affiliated group of cor-  
5 porations filing a consolidated return under section  
6 1501 shall be treated as a single taxpayer for pur-  
7 poses of this section.

8 “(7) DESIGNATION OF DIVIDENDS.—Subject to  
9 subsection (b)(2), the taxpayer shall designate the  
10 particular dividends received during the taxable year  
11 from 1 or more corporations which are controlled  
12 foreign corporations in which it is a United States  
13 shareholder which are dividends excluded from the  
14 excess qualified foreign distribution amount. The  
15 total amount of such designated dividends shall  
16 equal the base dividend amount.

17 “(8) TREATMENT OF EXPENSES, LOSSES, AND  
18 DEDUCTIONS.—Any expenses, losses, or deductions  
19 of the taxpayer allowable under subchapter B—

20 “(A) shall not be applied to reduce the  
21 amounts described in subsection (a)(1), and

22 “(B) shall be applied to reduce other in-  
23 come of the taxpayer (determined without re-  
24 gard to the amounts described in subsection  
25 (a)(1)).



1 “(d) ELECTION.—

2 “(1) IN GENERAL.—An election under this sec-  
3 tion shall be made on the taxpayer’s timely filed in-  
4 come tax return for the first taxable year (deter-  
5 mined by taking extensions into account) ending 120  
6 days or more after the date of the enactment of this  
7 section, and, once made, may be revoked only with  
8 the consent of the Secretary.

9 “(2) ALL CONTROLLED FOREIGN CORPORA-  
10 TIONS.—The election shall apply to all corporations  
11 which are controlled foreign corporations in which  
12 the taxpayer is a United States shareholder during  
13 the taxable year.

14 “(3) CONSOLIDATED GROUPS.—If a taxpayer is  
15 a member of an affiliated group of corporations fil-  
16 ing a consolidated return under section 1501 for the  
17 taxable year, an election under this section shall be  
18 made by the common parent of the affiliated group  
19 which includes the taxpayer and shall apply to all  
20 members of the affiliated group.

21 “(e) REGULATIONS.—The Secretary shall prescribe  
22 such regulations as may be necessary and appropriate to  
23 carry out the purposes of this section, including regula-  
24 tions under section 55 and regulations addressing corpora-  
25 tions which, during the fixed base period or thereafter,

1 join or leave an affiliated group of corporations filing a  
2 consolidated return.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-  
4 tions for subpart F of part III of subchapter N of chapter  
5 1 is amended by adding at the end the following new item:

“Sec. 965. Toll tax imposed on excess qualified foreign distribu-  
tion amount.”.

6 (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply only to the first taxable year of  
8 the electing taxpayer ending 120 days or more after the  
9 date of the enactment of this Act.

10 **SEC. 232. EXCLUSION OF INCOME DERIVED FROM CERTAIN**  
11 **WAGERS ON HORSE RACES AND DOG RACES**  
12 **FROM GROSS INCOME OF NONRESIDENT**  
13 **ALIEN INDIVIDUALS.**

14 (a) IN GENERAL.—Subsection (b) of section 872 (re-  
15 lating to exclusions) is amended by redesignating para-  
16 graphs (5), (6), and (7) as paragraphs (6), (7), and (8),  
17 respectively, and inserting after paragraph (4) the fol-  
18 lowing new paragraph:

19 “(5) INCOME DERIVED FROM WAGERING  
20 TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—  
21 Gross income derived by a nonresident alien indi-  
22 vidual from a legal wagering transaction initiated  
23 outside the United States in a parimutuel pool with

1       respect to a live horse race or dog race in the United  
2       States.”.

3       (b) CONFORMING AMENDMENT.—Section 883(a)(4)  
4       is amended by striking “(5), (6), and (7)” and inserting  
5       “(6), (7), and (8)”.

6       (c) EFFECTIVE DATE.—The amendments made by  
7       this section shall apply to wagers made after the date of  
8       the enactment of this Act.

9       **SEC. 233. LIMITATION OF WITHHOLDING TAX FOR PUERTO**  
10       **RICO CORPORATIONS.**

11       (a) IN GENERAL.—Subsection (b) of section 881 is  
12       amended by redesignating paragraph (2) as paragraph (3)  
13       and by inserting after paragraph (1) the following new  
14       paragraph:

15               “(2) COMMONWEALTH OF PUERTO RICO.—If  
16       dividends are received during a taxable year by a  
17       corporation—

18                       “(A) created or organized in, or under the  
19       law of, the Commonwealth of Puerto Rico, and

20                       “(B) with respect to which the require-  
21       ments of subparagraphs (A), (B), and (C) of  
22       paragraph (1) are met for the taxable year,  
23       subsection (a) shall be applied for such taxable year  
24       by substituting ‘10 percent’ for ‘30 percent’.”.

1 (b) WITHHOLDING.—Subsection (c) of section 1442  
 2 (relating to withholding of tax on foreign corporations) is  
 3 amended—

4 (1) by striking “For purposes” and inserting  
 5 the following:

6 “(1) GUAM, AMERICAN SAMOA, THE NORTHERN  
 7 MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For  
 8 purposes”, and

9 (2) by adding at the end the following new  
 10 paragraph:

11 “(2) COMMONWEALTH OF PUERTO RICO.—If  
 12 dividends are received during a taxable year by a  
 13 corporation—

14 “(A) created or organized in, or under the  
 15 law of, the Commonwealth of Puerto Rico, and

16 “(B) with respect to which the require-  
 17 ments of subparagraphs (A), (B), and (C) of  
 18 section 881(b)(1) are met for the taxable year,  
 19 subsection (a) shall be applied for such taxable year  
 20 by substituting ‘10 percent’ for ‘30 percent’.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Subsection (b) of section 881 is amended by  
 23 striking “GUAM AND VIRGIN ISLANDS CORPORA-  
 24 TIONS” in the heading and inserting “POSSES-  
 25 SIONS”.

1           (2) Paragraph (1) of section 881(b) is amended  
 2           by striking “IN GENERAL” in the heading and in-  
 3           serting “GUAM, AMERICAN SAMOA, THE NORTHERN  
 4           MARIANA ISLANDS, AND THE VIRGIN ISLANDS”.

5           (c) EFFECTIVE DATE.—The amendments made by  
 6           this section shall apply to dividends paid after the date  
 7           of the enactment of this Act.

8           **SEC. 234. REPORT ON WTO DISPUTE SETTLEMENT PANELS**  
 9                               **AND THE APPELLATE BODY.**

10          Not later than March 31, 2004, the Secretary of  
 11          Commerce, in consultation with the United States Trade  
 12          Representative, shall transmit a report to the Committee  
 13          on Finance of the Senate and the Committee on Ways and  
 14          Means of the House of Representatives, regarding whether  
 15          dispute settlement panels and the Appellate Body of the  
 16          World Trade Organization have—

17               (1) added to or diminished the rights of the  
 18          United States by imposing obligations or restrictions  
 19          on the use of antidumping, countervailing, and safe-  
 20          guard measures not agreed to under the Agreement  
 21          on Implementation of Article VI of the General  
 22          Agreement on Tariffs and Trade of 1994, the Agree-  
 23          ment on Subsidies and Countervailing Measures,  
 24          and the Agreement on Safeguards;

1           (2) appropriately applied the standard of review  
2           contained in Article 17.6 of the Agreement on Im-  
3           plementation of Article VI of the General Agreement  
4           on Tariffs and Trade of 1994; or

5           (3) exceeded their authority or terms of ref-  
6           erence under the Agreements referred to in para-  
7           graph (1).

8   **SEC. 235. STUDY OF IMPACT OF INTERNATIONAL TAX LAWS**  
9                           **ON TAXPAYERS OTHER THAN LARGE COR-**  
10                          **PORATIONS.**

11       (a) **STUDY.**—The Secretary of the Treasury or the  
12       Secretary’s delegate shall conduct a study of the impact  
13       of Federal international tax rules on taxpayers other than  
14       large corporations, including the burdens placed on such  
15       taxpayers in complying with such rules.

16       (b) **REPORT.**—Not later than 180 days after the date  
17       of the enactment of this Act, the Secretary shall report  
18       to the Committee on Finance of the Senate and the Com-  
19       mittee on Ways and Means of the House of Representa-  
20       tives the results of the study conducted under subsection  
21       (a), including any recommendations for legislative or ad-  
22       ministrative changes to reduce the compliance burden on  
23       taxpayers other than large corporations and for such other  
24       purposes as the Secretary determines appropriate.

1 **SEC. 236. DELAY IN EFFECTIVE DATE OF FINAL REGULA-**  
 2 **TIONS GOVERNING EXCLUSION OF INCOME**  
 3 **FROM INTERNATIONAL OPERATION OF SHIPS**  
 4 **OR AIRCRAFT.**

5 Notwithstanding the provisions of Treasury regula-  
 6 tion § 1.883–5, the final regulations issued by the Sec-  
 7 retary of the Treasury relating to income derived by for-  
 8 eign corporations from the international operation of ships  
 9 or aircraft (Treasury regulations § 1.883–1 through  
 10 § 1.883–5) shall apply to taxable years of a foreign cor-  
 11 poration seeking qualified foreign corporation status be-  
 12 ginning after December 31, 2004.

13 **SEC. 237. INTEREST PAYMENTS DEDUCTIBLE WHERE DIS-**  
 14 **QUALIFIED GUARANTEE HAS NO ECONOMIC**  
 15 **EFFECT.**

16 (a) IN GENERAL.—Section 163(j)(6)(D)(ii) (relating  
 17 to exceptions to disqualified guarantee) is amended—

18 (1) by striking “or” at the end of subclause (I),

19 (2) by striking the period at the end of sub-  
 20 clause (II) and inserting “, or”,

21 (3) by inserting after subclause (II) the fol-  
 22 lowing new subclause:

23 “(III) in the case of a guarantee  
 24 by a foreign person, to the extent of  
 25 the amount that the taxpayer estab-  
 26 lishes to the satisfaction of the Sec-

1                   retary that the taxpayer could have  
 2                   borrowed from an unrelated person  
 3                   without the guarantee.”.

4           (b) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to guarantees issued on or after  
 6 the date of the enactment of this Act.

7   **TITLE III—DOMESTIC MANUFAC-**  
 8       **TURING AND BUSINESS PRO-**  
 9       **VISIONS**

10   **Subtitle A—General Provisions**

11   **SEC. 301. EXPANSION OF QUALIFIED SMALL-ISSUE BOND**  
 12       **PROGRAM.**

13           (a) IN GENERAL.—Subparagraph (F) of section  
 14 144(a)(4) (relating to \$10,000,000 limit in certain cases)  
 15 is amended to read as follows:

16                   “(F) ADDITIONAL CAPITAL EXPENDITURES  
 17                   NOT TAKEN INTO ACCOUNT.—With respect to  
 18                   any issue, in addition to any capital expenditure  
 19                   described in subparagraph (C), capital expendi-  
 20                   tures of not to exceed \$10,000,000 shall not be  
 21                   taken into account for purposes of applying  
 22                   subparagraph (A)(ii).”.

23           (b) EFFECTIVE DATE.—The amendment made by  
 24 this section shall apply to bonds issued after the date of  
 25 the enactment of this Act.



1 **SEC. 302. EXPENSING OF BROADBAND INTERNET ACCESS**  
 2 **EXPENDITURES.**

3 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 4 ter 1 (relating to itemized deductions for individuals and  
 5 corporations) is amended by inserting after section 190  
 6 the following new section:

7 **“SEC. 191. BROADBAND EXPENDITURES.**

8 “(a) TREATMENT OF EXPENDITURES.—

9 “(1) IN GENERAL.—A taxpayer may elect to  
 10 treat any qualified broadband expenditure which is  
 11 paid or incurred by the taxpayer as an expense  
 12 which is not chargeable to capital account. Any ex-  
 13 penditure which is so treated shall be allowed as a  
 14 deduction.

15 “(2) ELECTION.—An election under paragraph  
 16 (1) shall be made at such time and in such manner  
 17 as the Secretary may prescribe by regulation.

18 “(b) QUALIFIED BROADBAND EXPENDITURES.—For  
 19 purposes of this section—

20 “(1) IN GENERAL.—The term ‘qualified  
 21 broadband expenditure’ means, with respect to any  
 22 taxable year, any direct or indirect costs incurred  
 23 and properly taken into account with respect to—

24 “(A) the purchase or installation of quali-  
 25 fied equipment (including any upgrades there-  
 26 to), and

1           “(B) the connection of such qualified  
2           equipment to any qualified subscriber.

3           “(2) CERTAIN SATELLITE EXPENDITURES EX-  
4           CLUDED.—Such term shall not include any costs in-  
5           curred with respect to the launching of any satellite  
6           equipment.

7           “(3) LEASED EQUIPMENT.—Such term shall in-  
8           clude so much of the purchase price paid by the les-  
9           sor of qualified equipment subject to a lease de-  
10          scribed in subsection (c)(2)(B) as is attributable to  
11          expenditures incurred by the lessee which would oth-  
12          erwise be described in paragraph (1).

13          “(c) WHEN EXPENDITURES TAKEN INTO AC-  
14          COUNT.—For purposes of this section—

15               “(1) IN GENERAL.—Qualified broadband ex-  
16               penditures with respect to qualified equipment shall  
17               be taken into account with respect to the first tax-  
18               able year in which—

19                       “(A) current generation broadband services  
20                       are provided through such equipment to quali-  
21                       fied subscribers, or

22                       “(B) next generation broadband services  
23                       are provided through such equipment to quali-  
24                       fied subscribers.

25               “(2) LIMITATION.—

1           “(A) IN GENERAL.—Qualified expenditures  
2           shall be taken into account under paragraph (1)  
3           only with respect to qualified equipment—

4                   “(i) the original use of which com-  
5                   mences with the taxpayer, and

6                   “(ii) which is placed in service, after  
7                   the date of the enactment of this Act.

8           “(B) SALE-LEASEBACKS.—For purposes of  
9           subparagraph (A), if property—

10                   “(i) is originally placed in service  
11                   after the date of the enactment of this Act  
12                   by any person, and

13                   “(ii) sold and leased back by such per-  
14                   son within 3 months after the date such  
15                   property was originally placed in service,  
16           such property shall be treated as originally  
17           placed in service not earlier than the date on  
18           which such property is used under the leaseback  
19           referred to in clause (ii).

20           “(d) SPECIAL ALLOCATION RULES.—

21                   “(1) CURRENT GENERATION BROADBAND SERV-  
22           ICES.—For purposes of determining the amount of  
23           qualified broadband expenditures under subsection  
24           (a)(1) with respect to qualified equipment through  
25           which current generation broadband services are

1 provided, if the qualified equipment is capable of  
2 serving both qualified subscribers and other sub-  
3 scribers, the qualified broadband expenditures shall  
4 be multiplied by a fraction—

5 “(A) the numerator of which is the sum of  
6 the number of potential qualified subscribers  
7 within the rural areas and the underserved  
8 areas which the equipment is capable of serving  
9 with current generation broadband services, and

10 “(B) the denominator of which is the total  
11 potential subscriber population of the area  
12 which the equipment is capable of serving with  
13 current generation broadband services.

14 “(2) NEXT GENERATION BROADBAND SERV-  
15 ICES.—For purposes of determining the amount of  
16 qualified broadband expenditures under subsection  
17 (a)(1) with respect to qualified equipment through  
18 which next generation broadband services are pro-  
19 vided, if the qualified equipment is capable of serv-  
20 ing both qualified subscribers and other subscribers,  
21 the qualified expenditures shall be multiplied by a  
22 fraction—

23 “(A) the numerator of which is the sum  
24 of—

1 “(i) the number of potential qualified  
2 subscribers within the rural areas and un-  
3 derserved areas, plus

4 “(ii) the number of potential qualified  
5 subscribers within the area consisting only  
6 of residential subscribers not described in  
7 clause (i),

8 which the equipment is capable of serving with  
9 next generation broadband services, and

10 “(B) the denominator of which is the total  
11 potential subscriber population of the area  
12 which the equipment is capable of serving with  
13 next generation broadband services.

14 “(e) DEFINITIONS.—For purposes of this section—

15 “(1) ANTENNA.—The term ‘antenna’ means  
16 any device used to transmit or receive signals  
17 through the electromagnetic spectrum, including sat-  
18 ellite equipment.

19 “(2) CABLE OPERATOR.—The term ‘cable oper-  
20 ator’ has the meaning given such term by section  
21 602(5) of the Communications Act of 1934 (47  
22 U.S.C. 522(5)).

23 “(3) COMMERCIAL MOBILE SERVICE CAR-  
24 RIER.—The term ‘commercial mobile service carrier’  
25 means any person authorized to provide commercial

1 mobile radio service as defined in section 20.3 of  
2 title 47, Code of Federal Regulations.

3 “(4) CURRENT GENERATION BROADBAND SERV-  
4 ICE.—The term ‘current generation broadband serv-  
5 ice’ means the transmission of signals at a rate of  
6 at least 1,000,000 bits per second to the subscriber  
7 and at least 128,000 bits per second from the sub-  
8 scriber.

9 “(5) MULTIPLEXING OR DEMULTIPLEXING.—  
10 The term ‘multiplexing’ means the transmission of 2  
11 or more signals over a single channel, and the term  
12 ‘demultiplexing’ means the separation of 2 or more  
13 signals previously combined by compatible multi-  
14 plexing equipment.

15 “(6) NEXT GENERATION BROADBAND SERV-  
16 ICE.—The term ‘next generation broadband service’  
17 means the transmission of signals at a rate of at  
18 least 22,000,000 bits per second to the subscriber  
19 and at least 5,000,000 bits per second from the sub-  
20 scriber.

21 “(7) NONRESIDENTIAL SUBSCRIBER.—The  
22 term ‘nonresidential subscriber’ means any person  
23 who purchases broadband services which are deliv-  
24 ered to the permanent place of business of such per-  
25 son.

1           “(8) OPEN VIDEO SYSTEM OPERATOR.—The  
 2           term ‘open video system operator’ means any person  
 3           authorized to provide service under section 653 of  
 4           the Communications Act of 1934 (47 U.S.C. 573).

5           “(9) OTHER WIRELESS CARRIER.—The term  
 6           ‘other wireless carrier’ means any person (other than  
 7           a telecommunications carrier, commercial mobile  
 8           service carrier, cable operator, open video system op-  
 9           erator, or satellite carrier) providing current genera-  
 10          tion broadband services or next generation  
 11          broadband service to subscribers through the radio  
 12          transmission of energy.

13          “(10) PACKET SWITCHING.—The term ‘packet  
 14          switching’ means controlling or routing the path of  
 15          any digitized transmission signal which is assembled  
 16          into packets or cells.

17          “(11) PROVIDER.—The term ‘provider’ means,  
 18          with respect to any qualified equipment—

19                 “(A) a cable operator,

20                 “(B) a commercial mobile service carrier,

21                 “(C) an open video system operator,

22                 “(D) a satellite carrier,

23                 “(E) a telecommunications carrier, or

24                 “(F) any other wireless carrier,

1 providing current generation broadband services or  
2 next generation broadband services to subscribers  
3 through such qualified equipment.

4 “(12) PROVISION OF SERVICES.—A provider  
5 shall be treated as providing services to 1 or more  
6 subscribers if—

7 “(A) such a subscriber has been passed by  
8 the provider’s equipment and can be connected  
9 to such equipment for a standard connection  
10 fee,

11 “(B) the provider is physically able to de-  
12 liver current generation broadband services or  
13 next generation broadband services, as applica-  
14 ble, to such a subscriber without making more  
15 than an insignificant investment with respect to  
16 such subscriber,

17 “(C) the provider has made reasonable ef-  
18 forts to make such subscribers aware of the  
19 availability of such services,

20 “(D) such services have been purchased by  
21 1 or more such subscribers, and

22 “(E) such services are made available to  
23 such subscribers at average prices comparable  
24 to those at which the provider makes available



1 similar services in any areas in which the pro-  
2 vider makes available such services.

3 “(13) QUALIFIED EQUIPMENT.—

4 “(A) IN GENERAL.—The term ‘qualified  
5 equipment’ means equipment which provides  
6 current generation broadband services or next  
7 generation broadband services—

8 “(i) at least a majority of the time  
9 during periods of maximum demand to  
10 each subscriber who is utilizing such serv-  
11 ices, and

12 “(ii) in a manner substantially the  
13 same as such services are provided by the  
14 provider to subscribers through equipment  
15 with respect to which no deduction is al-  
16 lowed under subsection (a)(1).

17 “(B) ONLY CERTAIN INVESTMENT TAKEN  
18 INTO ACCOUNT.—Except as provided in sub-  
19 paragraph (C) or (D), equipment shall be taken  
20 into account under subparagraph (A) only to  
21 the extent it—

22 “(i) extends from the last point of  
23 switching to the outside of the unit, build-  
24 ing, dwelling, or office owned or leased by

1 a subscriber in the case of a telecommuni-  
2 cations carrier,

3 “(ii) extends from the customer side  
4 of the mobile telephone switching office to  
5 a transmission/receive antenna (including  
6 such antenna) owned or leased by a sub-  
7 scriber in the case of a commercial mobile  
8 service carrier,

9 “(iii) extends from the customer side  
10 of the headend to the outside of the unit,  
11 building, dwelling, or office owned or  
12 leased by a subscriber in the case of a  
13 cable operator or open video system oper-  
14 ator, or

15 “(iv) extends from a transmission/re-  
16 ceive antenna (including such antenna)  
17 which transmits and receives signals to or  
18 from multiple subscribers, to a trans-  
19 mission/receive antenna (including such  
20 antenna) on the outside of the unit, build-  
21 ing, dwelling, or office owned or leased by  
22 a subscriber in the case of a satellite car-  
23 rier or other wireless carrier, unless such  
24 other wireless carrier is also a tele-  
25 communications carrier.

1           “(C) PACKET SWITCHING EQUIPMENT.—

2           Packet switching equipment, regardless of loca-  
3           tion, shall be taken into account under subpara-  
4           graph (A) only if it is deployed in connection  
5           with equipment described in subparagraph (B)  
6           and is uniquely designed to perform the func-  
7           tion of packet switching for current generation  
8           broadband services or next generation  
9           broadband services, but only if such packet  
10          switching is the last in a series of such func-  
11          tions performed in the transmission of a signal  
12          to a subscriber or the first in a series of such  
13          functions performed in the transmission of a  
14          signal from a subscriber.

15                 “(D)                 MULTIPLEXING                 AND

16          DEMULTIPLEXING   EQUIPMENT.—Multiplexing  
17          and demultiplexing equipment shall be taken  
18          into account under subparagraph (A) only to  
19          the extent it is deployed in connection with  
20          equipment described in subparagraph (B) and  
21          is uniquely designed to perform the function of  
22          multiplexing and demultiplexing packets or cells  
23          of data and making associated application  
24          adaptions, but only if such multiplexing or  
25          demultiplexing equipment is located between

1 packet switching equipment described in sub-  
2 paragraph (C) and the subscriber's premises.

3 “(14) QUALIFIED SUBSCRIBER.—The term  
4 ‘qualified subscriber’ means—

5 “(A) with respect to the provision of cur-  
6 rent generation broadband services—

7 “(i) any nonresidential subscriber  
8 maintaining a permanent place of business  
9 in a rural area or underserved area, or

10 “(ii) any residential subscriber resid-  
11 ing in a dwelling located in a rural area or  
12 underserved area which is not a saturated  
13 market, and

14 “(B) with respect to the provision of next  
15 generation broadband services—

16 “(i) any nonresidential subscriber  
17 maintaining a permanent place of business  
18 in a rural area or underserved area, or

19 “(ii) any residential subscriber.

20 “(15) RESIDENTIAL SUBSCRIBER.—The term  
21 ‘residential subscriber’ means any individual who  
22 purchases broadband services which are delivered to  
23 such individual's dwelling.

24 “(16) RURAL AREA.—The term ‘rural area’  
25 means any census tract which—

1           “(A) is not within 10 miles of any incor-  
2           porated or census designated place containing  
3           more than 25,000 people, and

4           “(B) is not within a county or county  
5           equivalent which has an overall population den-  
6           sity of more than 500 people per square mile of  
7           land.

8           “(17) RURAL SUBSCRIBER.—The term ‘rural  
9           subscriber’ means any residential subscriber residing  
10          in a dwelling located in a rural area or nonresiden-  
11          tial subscriber maintaining a permanent place of  
12          business located in a rural area.

13          “(18) SATELLITE CARRIER.—The term ‘sat-  
14          ellite carrier’ means any person using the facilities  
15          of a satellite or satellite service licensed by the Fed-  
16          eral Communications Commission and operating in  
17          the Fixed-Satellite Service under part 25 of title 47  
18          of the Code of Federal Regulations or the Direct  
19          Broadcast Satellite Service under part 100 of title  
20          47 of such Code to establish and operate a channel  
21          of communications for distribution of signals, and  
22          owning or leasing a capacity or service on a satellite  
23          in order to provide such point-to-multipoint distribu-  
24          tion.

1           “(19) SATURATED MARKET.—The term ‘satu-  
 2           rated market’ means any census tract in which, as  
 3           of the date of the enactment of this section—

4                   “(A) current generation broadband services  
 5           have been provided by a single provider to 85  
 6           percent or more of the total number of potential  
 7           residential subscribers residing in dwellings lo-  
 8           cated within such census tract, and

9                   “(B) such services can be utilized—

10                   “(i) at least a majority of the time  
 11           during periods of maximum demand by  
 12           each such subscriber who is utilizing such  
 13           services, and

14                   “(ii) in a manner substantially the  
 15           same as such services are provided by the  
 16           provider to subscribers through equipment  
 17           with respect to which no deduction is al-  
 18           lowed under subsection (a)(1).

19           “(20) SUBSCRIBER.—The term ‘subscriber’  
 20           means any person who purchases current generation  
 21           broadband services or next generation broadband  
 22           services.

23           “(21) TELECOMMUNICATIONS CARRIER.—The  
 24           term ‘telecommunications carrier’ has the meaning

1 given such term by section 3(44) of the Communica-  
 2 tions Act of 1934 (47 U.S.C. 153(44)), but—

3 “(A) includes all members of an affiliated  
 4 group of which a telecommunications carrier is  
 5 a member, and

6 “(B) does not include a commercial mobile  
 7 service carrier.

8 “(22) TOTAL POTENTIAL SUBSCRIBER POPU-  
 9 LATION.—The term ‘total potential subscriber popu-  
 10 lation’ means, with respect to any area and based on  
 11 the most recent census data, the total number of po-  
 12 tential residential subscribers residing in dwellings  
 13 located in such area and potential nonresidential  
 14 subscribers maintaining permanent places of busi-  
 15 ness located in such area.

16 “(23) UNDERSERVED AREA.—The term ‘under-  
 17 served area’ means—

18 “(A) any census tract which is located in—

19 “(i) an empowerment zone or enter-  
 20 prise community designated under section  
 21 1391, or

22 “(ii) the District of Columbia Enter-  
 23 prise Zone established under section 1400,  
 24 or

25 “(B) any census tract—

1 “(i) the poverty level of which is at  
 2 least 30 percent (based on the most recent  
 3 census data), and

4 “(ii) the median family income of  
 5 which does not exceed—

6 “(I) in the case of a census tract  
 7 located in a metropolitan statistical  
 8 area, 70 percent of the greater of the  
 9 metropolitan area median family in-  
 10 come or the statewide median family  
 11 income, and

12 “(II) in the case of a census tract  
 13 located in a nonmetropolitan statis-  
 14 tical area, 70 percent of the non-  
 15 metropolitan statewide median family  
 16 income.

17 “(24) UNDERSERVED SUBSCRIBER.—The term  
 18 ‘underserved subscriber’ means any residential sub-  
 19 scriber residing in a dwelling located in an under-  
 20 served area or nonresidential subscriber maintaining  
 21 a permanent place of business located in an under-  
 22 served area.

23 “(f) SPECIAL RULES.—

24 “(1) PROPERTY USED OUTSIDE THE UNITED  
 25 STATES, ETC., NOT QUALIFIED.—No expenditures



1 shall be taken into account under subsection (a)(1)  
 2 with respect to the portion of the cost of any prop-  
 3 erty referred to in section 50(b) or with respect to  
 4 the portion of the cost of any property specified in  
 5 an election under section 179.

6 “(2) BASIS REDUCTION.—

7 “(A) IN GENERAL.—For purposes of this  
 8 title, the basis of any property shall be reduced  
 9 by the portion of the cost of such property  
 10 taken into account under subsection (a)(1).

11 “(B) ORDINARY INCOME RECAPTURE.—  
 12 For purposes of section 1245, the amount of  
 13 the deduction allowable under subsection (a)(1)  
 14 with respect to any property which is of a char-  
 15 acter subject to the allowance for depreciation  
 16 shall be treated as a deduction allowed for de-  
 17 preciation under section 167.

18 “(3) COORDINATION WITH SECTION 38.—No  
 19 credit shall be allowed under section 38 with respect  
 20 to any amount for which a deduction is allowed  
 21 under subsection (a)(1).”.

22 (b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE  
 23 TELEPHONE COMPANIES.—Section 512(b) (relating to  
 24 modifications) is amended by adding at the end the fol-  
 25 lowing new paragraph:

1           “(18) SPECIAL RULE FOR MUTUAL OR COOPER-  
2       ATIVE TELEPHONE COMPANIES.—A mutual or coop-  
3       erative telephone company which for the taxable year  
4       satisfies the requirements of section 501(c)(12)(A)  
5       may elect to reduce its unrelated business taxable in-  
6       come for such year, if any, by an amount that does  
7       not exceed the qualified broadband expenditures  
8       which would be taken into account under section  
9       191 for such year by such company if such company  
10      was not exempt from taxation. Any amount which is  
11      allowed as a deduction under this paragraph shall  
12      not be allowed as a deduction under section 191 and  
13      the basis of any property to which this paragraph  
14      applies shall be reduced under section  
15      1016(a)(29).”.

16      (c) CONFORMING AMENDMENTS.—

17           (1) Section 263(a)(1) (relating to capital ex-  
18      penditures) is amended by striking “or” at the end  
19      of subparagraph (G), by striking the period at the  
20      end of subparagraph (H) and inserting “, or”, and  
21      by adding at the end the following new subpara-  
22      graph:

23                   “(I) expenditures for which a deduction is  
24                   allowed under section 191.”.

1           (2) Section 1016(a) of such Code is amended  
 2           by striking “and” at the end of paragraph (27), by  
 3           striking the period at the end of paragraph (28) and  
 4           inserting “, and”, and by adding at the end the fol-  
 5           lowing new paragraph:

6           “(29) to the extent provided in section  
 7           191(f)(2).”.

8           (3) The table of sections for part VI of sub-  
 9           chapter A of chapter 1 of such Code is amended by  
 10          inserting after the item relating to section 190 the  
 11          following new item:

“Sec. 191. Broadband expenditures.”.

12          (d) DESIGNATION OF CENSUS TRACTS.—

13           (1) IN GENERAL.—The Secretary of the Treas-  
 14          ury shall, not later than 90 days after the date of  
 15          the enactment of this Act, designate and publish  
 16          those census tracts meeting the criteria described in  
 17          paragraphs (16), (22), and (23) of section 191(e) of  
 18          the Internal Revenue Code of 1986 (as added by  
 19          this section). In making such designations, the Sec-  
 20          retary of the Treasury shall consult with such other  
 21          departments and agencies as the Secretary deter-  
 22          mines appropriate.

23          (2) SATURATED MARKET.—

24           (A) IN GENERAL.—For purposes of desig-  
 25          nating and publishing those census tracts meet-

ing the criteria described in subsection (e)(19)  
of such section 191—

(i) the Secretary of the Treasury shall  
prescribe not later than 30 days after the  
date of the enactment of this Act the form  
upon which any provider which takes the  
position that it meets such criteria with re-  
spect to any census tract shall submit a  
list of such census tracts (and any other  
information required by the Secretary) not  
later than 60 days after the date of the  
publication of such form, and

(ii) the Secretary of the Treasury  
shall publish an aggregate list of such cen-  
sus tracts and the applicable providers not  
later than 30 days after the last date such  
submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—

The Secretary of the Treasury shall not be re-  
quired to publish any list of census tracts meet-  
ing such criteria subsequent to the list de-  
scribed in subparagraph (A)(ii).

(e) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency  
or instrumentality shall adopt regulations or rate-

1 making procedures that would have the effect of  
2 eliminating or reducing any deduction or portion  
3 thereof allowed under section 191 of the Internal  
4 Revenue Code of 1986 (as added by this section) or  
5 otherwise subverting the purpose of this section.

6 (2) TREASURY REGULATORY AUTHORITY.—It is  
7 the intent of Congress in providing the election to  
8 deduct qualified broadband expenditures under sec-  
9 tion 191 of the Internal Revenue Code of 1986 (as  
10 added by this section) to provide incentives for the  
11 purchase, installation, and connection of equipment  
12 and facilities offering expanded broadband access to  
13 the Internet for users in certain low income and  
14 rural areas of the United States, as well as to resi-  
15 dential users nationwide, in a manner that main-  
16 tains competitive neutrality among the various class-  
17 es of providers of broadband services. Accordingly,  
18 the Secretary of the Treasury shall prescribe such  
19 regulations as may be necessary or appropriate to  
20 carry out the purposes of section 191 of such Code,  
21 including—

22 (A) regulations to determine how and when  
23 a taxpayer that incurs qualified broadband ex-  
24 penditures satisfies the requirements of section

1           191 of such Code to provide broadband serv-  
2           ices, and

3                   (B) regulations describing the information,  
4           records, and data taxpayers are required to pro-  
5           vide the Secretary to substantiate compliance  
6           with the requirements of section 191 of such  
7           Code.

8           (f) EFFECTIVE DATE.—The amendments made by  
9           this section shall apply to expenditures incurred after the  
10          date of the enactment of this Act and before the date  
11          which is 12 months after the date of the enactment of  
12          this Act.

13   **SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DE-**  
14                   **TERMINATION OF PRODUCTION PERIOD FOR**  
15                   **DISTILLED SPIRITS UNDER SECTION 263A.**

16          (a) IN GENERAL.—Section 263A(f) of the Internal  
17          Revenue Code of 1986 (relating to general exceptions) is  
18          amended by adding at the end the following new para-  
19          graph:

20                   “(5) EXEMPTION OF NATURAL AGING PROCESS  
21          IN DETERMINATION OF PRODUCTION PERIOD FOR  
22          DISTILLED SPIRITS.—For purposes of this sub-  
23          section, the production period for distilled spirits  
24          shall be determined without regard to any period al-  
25          located to the natural aging process.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to production periods beginning  
 3 after the date of the enactment of this Act.

4 **SEC. 304. MODIFICATION OF ACTIVE BUSINESS DEFINITION**  
 5 **UNDER SECTION 355.**

6 (a) IN GENERAL.—Section 355(b) (defining active  
 7 conduct of a trade or business) is amended by adding at  
 8 the end the following new paragraph:

9 “(3) SPECIAL RULES RELATING TO ACTIVE  
 10 BUSINESS REQUIREMENT.—

11 “(A) IN GENERAL.—For purposes of deter-  
 12 mining whether a corporation meets the re-  
 13 quirement of paragraph (2)(A), all members of  
 14 such corporation’s separate affiliated group  
 15 shall be treated as one corporation. For pur-  
 16 poses of the preceding sentence, a corporation’s  
 17 separate affiliated group is the affiliated group  
 18 which would be determined under section  
 19 1504(a) if such corporation were the common  
 20 parent and section 1504(b) did not apply.

21 “(B) CONTROL.—For purposes of para-  
 22 graph (2)(D), all distributee corporations which  
 23 are members of the same affiliated group (as  
 24 defined in section 1504(a) without regard to

1           section 1504(b)) shall be treated as one dis-  
2           tributee corporation.”.

3       (b) CONFORMING AMENDMENTS.—

4           (1) Subparagraph (A) of section 355(b)(2) is  
5       amended to read as follows:

6           “(A) it is engaged in the active conduct of  
7           a trade or business,”.

8           (2) Section 355(b)(2) is amended by striking  
9       the last sentence.

10      (c) EFFECTIVE DATE.—

11           (1) IN GENERAL.—The amendments made by  
12       this section shall apply—

13           (A) to distributions after the date of the  
14       enactment of this Act, and

15           (B) for purposes of determining the contin-  
16       ued qualification under section 355(b)(2)(A) of  
17       the Internal Revenue Code of 1986 (as amend-  
18       ed by subsection (b)(1)) of distributions made  
19       before such date, as a result of an acquisition,  
20       disposition, or other restructuring after such  
21       date.

22           (2) TRANSITION RULE.—The amendments  
23       made by this section shall not apply to any distribu-  
24       tion pursuant to a transaction which is—



1 (A) made pursuant to an agreement which  
 2 was binding on such date of enactment and at  
 3 all times thereafter,

4 (B) described in a ruling request submitted  
 5 to the Internal Revenue Service on or before  
 6 such date, or

7 (C) described on or before such date in a  
 8 public announcement or in a filing with the Se-  
 9 curities and Exchange Commission.

10 (3) ELECTION TO HAVE AMENDMENTS  
 11 APPLY.—Paragraph (2) shall not apply if the dis-  
 12 tributing corporation elects not to have such para-  
 13 graph apply to distributions of such corporation.  
 14 Any such election, once made, shall be irrevocable.

15 **SEC. 305. MODIFIED TAXATION OF IMPORTED ARCHERY**  
 16 **PRODUCTS.**

17 (a) BOWS.—Paragraph (1) of section 4161(b) (relat-  
 18 ing to bows) is amended to read as follows:

19 “(1) BOWS.—

20 “(A) IN GENERAL.—There is hereby im-  
 21 posed on the sale by the manufacturer, pro-  
 22 ducer, or importer of any bow which has a peak  
 23 draw weight of 30 pounds or more, a tax equal  
 24 to 11 percent of the price for which so sold.

1           “(B) ARCHERY EQUIPMENT.—There is  
2 hereby imposed on the sale by the manufac-  
3 turer, producer, or importer—

4           “(i) of any part or accessory suitable  
5 for inclusion in or attachment to a bow de-  
6 scribed in subparagraph (A), and

7           “(ii) of any quiver or broadhead suit-  
8 able for use with an arrow described in  
9 paragraph (2),  
10 a tax equal to 11 percent of the price for which  
11 so sold.”.

12       (b) ARROWS.—Subsection (b) of section 4161 (relat-  
13 ing to bows and arrows, etc.) is amended by redesignating  
14 paragraph (3) as paragraph (4) and inserting after para-  
15 graph (2) the following:

16           “(3) ARROWS.—

17           “(A) IN GENERAL.—There is hereby im-  
18 posed on the sale by the manufacturer, pro-  
19 ducer, or importer of any arrow, a tax equal to  
20 12 percent of the price for which so sold.

21           “(B) EXCEPTION.—In the case of any  
22 arrow of which the shaft or any other compo-  
23 nent has been previously taxed under paragraph  
24 (1) or (2)—

1 “(i) section 6416(b)(3) shall not  
2 apply, and

3 “(ii) the tax imposed by subparagraph  
4 (A) shall be an amount equal to the excess  
5 (if any) of—

6 “(I) the amount of tax imposed  
7 by this paragraph (determined with-  
8 out regard to this subparagraph), over

9 “(II) the amount of tax paid with  
10 respect to the tax imposed under  
11 paragraph (1) or (2) on such shaft or  
12 component.

13 “(C) ARROW.—For purposes of this para-  
14 graph, the term ‘arrow’ means any shaft de-  
15 scribed in paragraph (2) to which additional  
16 components are attached.”.

17 (c) CONFORMING AMENDMENTS.—Section  
18 4161(b)(2) is amended—

19 (1) by inserting “(other than broadheads)”  
20 after “point”, and

21 (2) by striking “ARROWS.—” in the heading  
22 and inserting “ARROW COMPONENTS.—”.

23 (d) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to articles sold by the manufac-

1 turer, producer, or importer after the date which is 30  
2 days after the date of the enactment of this Act.

3 **SEC. 306. MODIFICATION TO COOPERATIVE MARKETING**  
4 **RULES TO INCLUDE VALUE ADDED PROC-**  
5 **ESSING INVOLVING ANIMALS.**

6 (a) IN GENERAL.—Section 1388 (relating to defini-  
7 tions and special rules) is amended by adding at the end  
8 the following new subsection:

9 “(k) COOPERATIVE MARKETING INCLUDES VALUE-  
10 ADDED PROCESSING INVOLVING ANIMALS.—For pur-  
11 poses of section 521 and this subchapter, the marketing  
12 of the products of members or other producers shall in-  
13 clude the feeding of such products to cattle, hogs, fish,  
14 chickens, or other animals and the sale of the resulting  
15 animals or animal products.”.

16 (b) CONFORMING AMENDMENT.—Section 521(b) is  
17 amended by adding at the end the following new para-  
18 graph:

19 “(7) CROSS REFERENCE.—

**“For treatment of value-added processing involv-**  
**ing animals, see section 1388(k).”.**

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to taxable years beginning after  
22 the date of the enactment of this Act.

1 **SEC. 307. EXTENSION OF DECLARATORY JUDGMENT PRO-**  
 2 **CEDURES TO FARMERS' COOPERATIVE ORGA-**  
 3 **NIZATIONS.**

4 (a) IN GENERAL.—Section 7428(a)(1) (relating to  
 5 declaratory judgments of tax exempt organizations) is  
 6 amended by striking “or” at the end of subparagraph (B)  
 7 and by adding at the end the following new subparagraph:

8 “(D) with respect to the initial classifica-  
 9 tion or continuing classification of a cooperative  
 10 as an organization described in section 521(b)  
 11 which is exempt from tax under section 521(a),  
 12 or”.

13 (b) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply with respect to pleadings filed after  
 15 the date of the enactment of this Act.

16 **SEC. 308. TEMPORARY SUSPENSION OF PERSONAL HOLD-**  
 17 **ING COMPANY TAX.**

18 (a) IN GENERAL.—Section 541 (relating to imposi-  
 19 tion of personal holding company tax) is amended by add-  
 20 ing at the end the following new sentence: “The preceding  
 21 sentence shall not apply with respect to any taxable year  
 22 to which section 1(h)(11) (as in effect on the date of the  
 23 enactment of this sentence) applies.”.

24 (b) COORDINATION WITH ACCUMULATED EARNINGS  
 25 TAX.—Section 532(b) is amended by adding at the end  
 26 the following flush sentence:

1 “Paragraph (1) shall not apply to any taxable year to  
2 which section 541 does not apply.”

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2003.

6 **SEC. 309. INCREASE IN SECTION 179 EXPENSING.**

7 (a) IN GENERAL.—Section 179(b)(2) (relating to re-  
8 duction in limitation) is amended by inserting “50 percent  
9 of” before “the amount”.

10 (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to taxable years beginning after  
12 December 31, 2002.

13 **SEC. 310. FIVE-YEAR CARRYBACK OF NET OPERATING**  
14 **LOSSES.**

15 (a) IN GENERAL.—Subparagraph (H) of section  
16 172(b)(1) is amended—

17 (1) by inserting “5-YEAR CARRYBACK OF CER-  
18 TAIN LOSSES.—” after “(H)”, and

19 (2) by striking “or 2002” and inserting “,  
20 2002, or 2003”.

21 (b) RULES RELATING TO CERTAIN EXTENDED NET  
22 OPERATING LOSSES.—Section 172 is amended by redesign-  
23 ating subsection (k) as subsection (l) and by inserting  
24 after subsection (j) the following new subsection:

1       “(k) RULES RELATING TO CERTAIN EXTENDED NET  
 2 OPERATING LOSSES.—In the case of a taxpayer which has  
 3 a net operating loss for any taxable year ending during  
 4 2003 and does not make an election under subsection (j),  
 5 such taxpayer shall be treated as having made an election  
 6 under paragraphs (4)(E) and (2)(C)(iii) of section 168(k)  
 7 with respect to all classes of property for such taxable  
 8 year.

9       (c) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT  
 10 ON CERTAIN NOL CARRYOVERS.—Section  
 11 56(d)(1)(A)(ii)(I) (relating to general rule defining alter-  
 12 native tax net operating loss deduction) is amended—

13           (1) by striking “or 2002” and inserting “,  
 14 2002, or 2003”, and

15           (2) by striking “and 2002” and inserting “,  
 16 2002, and 2003”.

17       (d) TECHNICAL CORRECTIONS.—

18           (1) Subparagraph (H) of section 172(b)(1) is  
 19 amended by striking “a taxpayer which has”.

20           (2) Section 102(c)(2) of the Job Creation and  
 21 Worker Assistance Act of 2002 (Public Law 107–  
 22 147) is amended by striking “before January 1,  
 23 2003” and inserting “after December 31, 1990”.

24           (3)(A) Subclause (I) of section 56(d)(1)(A)(i) is  
 25 amended by striking “attributable to carryovers”.

1           (B) Subclause (I) of section 56(d)(1)(A)(ii) is  
2 amended—

3           (i) by striking “for taxable years” and in-  
4 serting “from taxable years”, and

5           (ii) by striking “carryforwards” and insert-  
6 ing “carryovers”.

7       (e) EFFECTIVE DATES.—

8           (1) IN GENERAL.—Except as provided in para-  
9 graph (2), the amendments made by this section  
10 shall apply to net operating losses for taxable years  
11 ending after December 31, 2002.

12          (2) TECHNICAL CORRECTIONS.—The amend-  
13 ments made by subsection (d) shall take effect as if  
14 included in the amendments made by section 102 of  
15 the Job Creation and Worker Assistance Act of  
16 2002.

17          (3) ELECTION.—In the case of a net operating  
18 loss for a taxable year ending during 2003—

19               (A) any election made under section  
20 172(b)(3) of such Code may (notwithstanding  
21 such section) be revoked before November 15,  
22 2004, and

23               (B) any election made under section 172(j)  
24 of such Code shall (notwithstanding such sec-



tion) be treated as timely made if made before  
November 15, 2004.

(4) SPECIAL RULE FOR TAXPAYERS WITH TAX-  
ABLE YEARS ENDING DURING JANUARY.—Any tax-  
payer which has a taxable year ending during Janu-  
ary may elect under this paragraph to apply section  
172(b)(1)(H) of the Internal Revenue Code of 1986  
(as amended by this section) to its taxable year end-  
ing in 2004 rather than its taxable year ending in  
2003. If such election is made, then section 172(k)  
of such Code (as added by this section) shall be ap-  
plied to the taxpayer’s taxable year ending in 2004.  
Such election shall be made in such manner and at  
such time as may be prescribed by the Secretary of  
the Treasury. Such election, once made, shall be ir-  
revocable.

**SEC. 311. EXTENSION AND MODIFICATION OF RESEARCH  
CREDIT.**

(a) EXTENSION.—

(1) IN GENERAL.—Section 41(h)(1)(B) (relat-  
ing to termination) is amended by striking “June  
30, 2004” and inserting “December 31, 2005”.

(2) CONFORMING AMENDMENT.—Section  
45C(b)(1)(D) is amended by striking “June 30,  
2004” and inserting “December 31, 2005”.

1 (b) INCREASE IN RATES OF ALTERNATIVE INCRE-  
 2 MENTAL CREDIT.—Subparagraph (A) of section 41(c)(4)  
 3 (relating to election of alternative incremental credit) is  
 4 amended—

5 (1) by striking “2.65 percent” and inserting “3  
 6 percent”,

7 (2) by striking “3.2 percent” and inserting “4  
 8 percent”, and

9 (3) by striking “3.75 percent” and inserting “5  
 10 percent”.

11 (c) ALTERNATIVE SIMPLIFIED CREDIT FOR QUALI-  
 12 FIED RESEARCH EXPENSES.—

13 (1) IN GENERAL.—Subsection (c) of section 41  
 14 (relating to base amount) is amended by redesignig-  
 15 nating paragraphs (5) and (6) as paragraphs (6)  
 16 and (7), respectively, and by inserting after para-  
 17 graph (4) the following new paragraph:

18 “(5) ELECTION OF ALTERNATIVE SIMPLIFIED  
 19 CREDIT.—

20 “(A) IN GENERAL.—At the election of the  
 21 taxpayer, the credit determined under sub-  
 22 section (a)(1) shall be equal to 12 percent of so  
 23 much of the qualified research expenses for the  
 24 taxable year as exceeds 50 percent of the aver-  
 25 age qualified research expenses for the 3 tax-

1           able years preceding the taxable year for which  
2           the credit is being determined.

3           “(B) SPECIAL RULE IN CASE OF NO  
4           QUALIFIED RESEARCH EXPENSES IN ANY OF 3  
5           PRECEDING TAXABLE YEARS.—

6                   “(i) TAXPAYERS TO WHICH SUBPARA-  
7                   GRAPH APPLIES.—The credit under this  
8                   paragraph shall be determined under this  
9                   subparagraph if the taxpayer has no quali-  
10                  fied research expenses in any 1 of the 3  
11                  taxable years preceding the taxable year  
12                  for which the credit is being determined.

13                   “(ii) CREDIT RATE.—The credit de-  
14                   termined under this subparagraph shall be  
15                   equal to 6 percent of the qualified research  
16                   expenses for the taxable year.

17                   “(C) ELECTION.—An election under this  
18                   paragraph shall apply to the taxable year for  
19                   which made and all succeeding taxable years  
20                   unless revoked with the consent of the Sec-  
21                   retary. An election under this paragraph may  
22                   not be made for any taxable year to which an  
23                   election under paragraph (4) applies.”

24           (2) COORDINATION WITH ELECTION OF ALTER-  
25           NATIVE INCREMENTAL CREDIT.—

1 (A) IN GENERAL.—Section 41(c)(4)(B)  
 2 (relating to election) is amended by adding at  
 3 the end the following: “An election under this  
 4 paragraph may not be made for any taxable  
 5 year to which an election under paragraph (5)  
 6 applies.”

7 (B) TRANSITION RULE.—In the case of an  
 8 election under section 41(c)(4) of the Internal  
 9 Revenue Code of 1986 which applies to the tax-  
 10 able year which includes the date of the enact-  
 11 ment of this Act, such election shall be treated  
 12 as revoked with the consent of the Secretary of  
 13 the Treasury if the taxpayer makes an election  
 14 under section 41(c)(5) of such Code (as added  
 15 by paragraph (1)) for such year.

16 (f) EFFECTIVE DATES.—

17 (1) SUBSECTION (a).—The amendments made  
 18 by subsection (a) shall apply to amounts paid or in-  
 19 curred after the date of the enactment of this Act.

20 (2) SUBSECTIONS (b) AND (c).—The amend-  
 21 ments made by subsections (b) and (c) shall apply  
 22 to taxable years beginning after December 31, 2004.

23 **SEC. 312. EXPANSION OF RESEARCH CREDIT.**

24 (a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CER-  
 25 TAIN COLLABORATIVE RESEARCH CONSORTIA.—

1           (1) IN GENERAL.—Section 41(a) (relating to  
2           credit for increasing research activities) is amended  
3           by striking “and” at the end of paragraph (1), by  
4           striking the period at the end of paragraph (2) and  
5           inserting “, and”, and by adding at the end the fol-  
6           lowing new paragraph:

7           “(3) 20 percent of the amounts paid or in-  
8           curred by the taxpayer in carrying on any trade or  
9           business of the taxpayer during the taxable year (in-  
10          cluding as contributions) to a research consortium.”.

11          (2) RESEARCH CONSORTIUM DEFINED.—Sec-  
12          tion 41(f) (relating to special rules) is amended by  
13          adding at the end the following new paragraph:

14          “(6) RESEARCH CONSORTIUM.—

15                 “(A) IN GENERAL.—The term ‘research  
16                 consortium’ means any organization—

17                         “(i) which is—

18                                 “(I) described in section  
19                                 501(c)(3) or 501(c)(6) and is exempt  
20                                 from tax under section 501(a) and is  
21                                 organized and operated primarily to  
22                                 conduct research, or

23                                 “(II) organized and operated pri-  
24                                 marily to conduct research in the pub-

1                   lic interest (within the meaning of sec-  
2                   tion 501(c)(3)),

3                   “(ii) which is not a private founda-  
4                   tion,

5                   “(iii) to which at least 5 unrelated  
6                   persons paid or incurred during the cal-  
7                   endar year in which the taxable year of the  
8                   organization begins amounts (including as  
9                   contributions) to such organization for re-  
10                  search, and

11                  “(iv) to which no single person paid  
12                  or incurred (including as contributions)  
13                  during such calendar year an amount  
14                  equal to more than 50 percent of the total  
15                  amounts received by such organization  
16                  during such calendar year for research.

17                  “(B) TREATMENT OF PERSONS.—All per-  
18                  sons treated as a single employer under sub-  
19                  section (a) or (b) of section 52 shall be treated  
20                  as related persons for purposes of subparagraph  
21                  (A)(iii) and as a single person for purposes of  
22                  subparagraph (A)(iv).”.

23                  (3) CONFORMING AMENDMENT.—Section  
24                  41(b)(3)(C) is amended by inserting “(other than a  
25                  research consortium)” after “organization”.

1       (b) REPEAL OF LIMITATION ON CONTRACT RE-  
 2 SEARCH EXPENSES PAID TO SMALL BUSINESSES, UNI-  
 3 VERSITIES, AND FEDERAL LABORATORIES.—Section  
 4 41(b)(3) (relating to contract research expenses) is  
 5 amended by adding at the end the following new subpara-  
 6 graph:

7               “(D) AMOUNTS PAID TO ELIGIBLE SMALL  
 8 BUSINESSES, UNIVERSITIES, AND FEDERAL  
 9 LABORATORIES.—

10              “(i) IN GENERAL.—In the case of  
 11 amounts paid by the taxpayer to—

12                      “(I) an eligible small business,

13                      “(II) an institution of higher  
 14 education (as defined in section  
 15 3304(f)), or

16                      “(III) an organization which is a  
 17 Federal laboratory,  
 18 for qualified research, subparagraph (A)  
 19 shall be applied by substituting ‘100 per-  
 20 cent’ for ‘65 percent’.

21              “(ii) ELIGIBLE SMALL BUSINESS.—  
 22 For purposes of this subparagraph, the  
 23 term ‘eligible small business’ means a  
 24 small business with respect to which the

1 taxpayer does not own (within the meaning  
2 of section 318) 50 percent or more of—

3 “(I) in the case of a corporation,  
4 the outstanding stock of the corpora-  
5 tion (either by vote or value), and

6 “(II) in the case of a small busi-  
7 ness which is not a corporation, the  
8 capital and profits interests of the  
9 small business.

10 “(iii) SMALL BUSINESS.—For pur-  
11 poses of this subparagraph—

12 “(I) IN GENERAL.—The term  
13 ‘small business’ means, with respect  
14 to any calendar year, any person if  
15 the annual average number of employ-  
16 ees employed by such person during  
17 either of the 2 preceding calendar  
18 years was 500 or fewer. For purposes  
19 of the preceding sentence, a preceding  
20 calendar year may be taken into ac-  
21 count only if the person was in exist-  
22 ence throughout the year.

23 “(II) STARTUPS, CONTROLLED  
24 GROUPS, AND PREDECESSORS.—Rules  
25 similar to the rules of subparagraphs



1 (B) and (D) of section 220(c)(4) shall  
 2 apply for purposes of this clause.

3 “(iv) FEDERAL LABORATORY.—For  
 4 purposes of this subparagraph, the term  
 5 ‘Federal laboratory’ has the meaning given  
 6 such term by section 4(6) of the Steven-  
 7 son-Wydler Technology Innovation Act of  
 8 1980 (15 U.S.C. 3703(6)), as in effect on  
 9 the date of the enactment of the  
 10 Jumpstart Our Business Strength (JOBS)  
 11 Act.”.

12 (c) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to amounts paid or incurred after  
 14 December 31, 2004.

15 **SEC. 313. MANUFACTURER’S JOBS CREDIT.**

16 (a) IN GENERAL.—Subpart D of part IV of sub-  
 17 chapter A of chapter 1 (relating to business-related cred-  
 18 its), as amended by this Act, is amended by adding at  
 19 the end the following:

20 **“SEC. 45S. MANUFACTURER’S JOBS CREDIT.**

21 “(a) GENERAL RULE.—For purposes of section 38,  
 22 in the case of an eligible taxpayer, the manufacturer’s jobs  
 23 credit determined under this section is an amount equal  
 24 to 50 percent of the lesser of the following:

1           “(1) The excess of the W-2 wages paid by the  
2 taxpayer during the taxable year over the W-2  
3 wages paid by the taxpayer during the preceding  
4 taxable year.

5           “(2) The W-2 wages paid by the taxpayer dur-  
6 ing the taxable year to any employee who is an eligi-  
7 ble TAA recipient (as defined in section 35(c)(2))  
8 for any month during such taxable year.

9           “(3) 22.4 percent of the W-2 wages paid by the  
10 taxpayer during the taxable year.

11       “(b) LIMITATION.—

12           “(1) IN GENERAL.—If there is an excess de-  
13 scribed in paragraph (2)(A) for any taxable year, the  
14 amount of credit determined under subsection (a)  
15 (without regard to this subsection)—

16           “(A) if the value of domestic production  
17 determined under section 199(g)(2) for the tax-  
18 able year does not exceed such value for the  
19 preceding taxable year, shall be zero, and

20           “(B) if subparagraph (A) does not apply,  
21 shall be reduced (but not below zero) by the ap-  
22 plicable percentage of such amount.

23           “(2) APPLICABLE PERCENTAGE.—For purposes  
24 of paragraph (1), the term ‘applicable percentage’

1 means, with respect to any taxable year, the percent-  
 2 age equal to a fraction—

3 “(A) the numerator of which is the excess  
 4 (if any) of the modified value of worldwide pro-  
 5 duction of the taxpayer for the taxable year  
 6 over such modified value for the preceding tax-  
 7 able year, and

8 “(B) the denominator of which is the ex-  
 9 cess (if any) of the value of worldwide produc-  
 10 tion of the taxpayer for the taxable year over  
 11 such value for the preceding taxable year.

12 “(3) DEFINITIONS.—For purposes of this sub-  
 13 section—

14 “(A) VALUE OF WORLDWIDE PRODUC-  
 15 TION.—The value of worldwide production for  
 16 any taxable year shall be determined under sec-  
 17 tion 199(g)(4).

18 “(B) MODIFIED VALUE.—The term ‘modi-  
 19 fied value of worldwide production’ means the  
 20 value of worldwide production determined by  
 21 not taking into account any item taken into ac-  
 22 count in determining the value of domestic pro-  
 23 duction under section 199(g)(2).

24 “(c) ELIGIBLE TAXPAYER.—For purposes of this sec-  
 25 tion, the term ‘eligible taxpayer’ means any taxpayer—

1           “(1) which has domestic production gross re-  
 2           ceipts for the taxable year and the preceding taxable  
 3           year, and

4           “(2) which is not treated at any time during  
 5           the taxable year as an inverted domestic corporation  
 6           under section 7874.

7           “(d) DEFINITIONS AND SPECIAL RULE.—For pur-  
 8           poses of this section—

9           “(1) IN GENERAL.—Any term used in this sec-  
 10          tion which is also used in section 199 shall have the  
 11          meaning given such term by section 199.

12          “(2) SPECIAL RULE FOR W-2 WAGES.—Not-  
 13          withstanding paragraph (1), the amount of W-2  
 14          wages taken into account with respect to any em-  
 15          ployee for any taxable year shall not exceed \$50,000.

16          “(e) CERTAIN RULES MADE APPLICABLE.—For pur-  
 17          poses of this section, rules similar to the rules of section  
 18          52 shall apply.

19          “(f) TERMINATION.—This section shall not apply to  
 20          any taxable year beginning after December 31, 2005.”.

21          (b) CREDIT TO BE PART OF GENERAL BUSINESS  
 22          CREDIT.—Section 38(b) (relating to current year business  
 23          credit), as amended by this Act, is amended by striking  
 24          “plus” at the end of paragraph (29), by striking the period

1 at the end of paragraph (30) and inserting “, plus”, and  
 2 by adding at the end the following:

3 “(31) the manufacturer’s jobs credit determined  
 4 under section 45S.”.

5 (c) CLERICAL AMENDMENT.—The table of sections  
 6 for subpart D of part IV of subchapter A of chapter 1,  
 7 as amended by this Act, is amended by adding at the end  
 8 the following:

“Sec. 45S. Manufacturer’s jobs credit.”.

9 (d) EFFECTIVE DATE.—The amendments made by  
 10 this section shall apply to taxable years beginning after  
 11 December 31, 2003.

12 **SEC. 314. BROWNFIELDS DEMONSTRATION PROGRAM FOR**  
 13 **QUALIFIED GREEN BUILDING AND SUSTAIN-**  
 14 **ABLE DESIGN PROJECTS.**

15 (a) TREATMENT AS EXEMPT FACILITY BOND.—Sub-  
 16 section (a) of section 142 (relating to the definition of ex-  
 17 empt facility bond) is amended by striking “or” at the  
 18 end of paragraph (12), by striking the period at the end  
 19 of paragraph (13) and inserting “, or”, and by inserting  
 20 at the end the following new paragraph:

21 “(14) qualified green building and sustainable  
 22 design projects.”.

23 (b) QUALIFIED GREEN BUILDING AND SUSTAINABLE  
 24 DESIGN PROJECTS.—Section 142 (relating to exempt fa-

1 cility bonds) is amended by adding at the end thereof the  
2 following new subsection:

3 “(1) QUALIFIED GREEN BUILDING AND SUSTAIN-  
4 ABLE DESIGN PROJECTS.—

5 “(1) IN GENERAL.—For purposes of subsection  
6 (a)(14), the term ‘qualified green building and sus-  
7 tainable design project’ means any project which is  
8 designated by the Secretary, after consultation with  
9 the Administrator of the Environmental Protection  
10 Agency, as a qualified green building and sustain-  
11 able design project and which meets the require-  
12 ments of clauses (i), (ii), (iii), and (iv) of paragraph  
13 (4)(A).

14 “(2) DESIGNATIONS.—

15 “(A) IN GENERAL.—Within 60 days after  
16 the end of the application period described in  
17 paragraph (3)(A), the Secretary, after consulta-  
18 tion with the Administrator of the Environ-  
19 mental Protection Agency, shall designate quali-  
20 fied green building and sustainable design  
21 projects. At least one of the projects designated  
22 shall be located in, or within a 10-mile radius  
23 of, an empowerment zone as designated pursu-  
24 ant to section 1391, and at least one of the  
25 projects designated shall be located in a rural

1 State. No more than one project shall be des-  
2 ignated in a State. A project shall not be des-  
3 ignated if such project includes a stadium or  
4 arena for professional sports exhibitions or  
5 games.

6 “(B) MINIMUM CONSERVATION AND TECH-  
7 NOLOGY INNOVATION OBJECTIVES.—The Sec-  
8 retary, after consultation with the Adminis-  
9 trator of the Environmental Protection Agency,  
10 shall ensure that, in the aggregate, the projects  
11 designated shall—

12 “(i) reduce electric consumption by  
13 more than 150 megawatts annually as  
14 compared to conventional generation,

15 “(ii) reduce daily sulfur dioxide emis-  
16 sions by at least 10 tons compared to coal  
17 generation power,

18 “(iii) expand by 75 percent the do-  
19 mestic solar photovoltaic market in the  
20 United States (measured in megawatts) as  
21 compared to the expansion of that market  
22 from 2001 to 2002, and

23 “(iv) use at least 25 megawatts of  
24 fuel cell energy generation.

1           “(3) LIMITED DESIGNATIONS.—A project may  
2 not be designated under this subsection unless—

3           “(A) the project is nominated by a State  
4 or local government within 180 days of the en-  
5 actment of this subsection, and

6           “(B) such State or local government pro-  
7 vides written assurances that the project will  
8 satisfy the eligibility criteria described in para-  
9 graph (4).

10          “(4) APPLICATION.—

11          “(A) IN GENERAL.—A project may not be  
12 designated under this subsection unless the ap-  
13 plication for such designation includes a project  
14 proposal which describes the energy efficiency,  
15 renewable energy, and sustainable design fea-  
16 tures of the project and demonstrates that the  
17 project satisfies the following eligibility criteria:

18           “(i) GREEN BUILDING AND SUSTAIN-  
19 ABLE DESIGN.—At least 75 percent of the  
20 square footage of commercial buildings  
21 which are part of the project is registered  
22 for United States Green Building Council’s  
23 LEED certification and is reasonably ex-  
24 pected (at the time of the designation) to  
25 receive such certification. For purposes of



1 determining LEED certification as re-  
2 quired under this clause, points shall be  
3 credited by using the following:

4 “(I) For wood products, certifi-  
5 cation under the Sustainable Forestry  
6 Initiative Program and the American  
7 Tree Farm System.

8 “(II) For renewable wood prod-  
9 ucts, as credited for recycled content  
10 otherwise provided under LEED cer-  
11 tification.

12 “(III) For composite wood prod-  
13 ucts, certification under standards es-  
14 tablished by the American National  
15 Standards Institute, or such other vol-  
16 untary standards as published in the  
17 Federal Register by the Administrator  
18 of the Environmental Protection  
19 Agency.

20 “(ii) BROWNFIELD REDEVELOP-  
21 MENT.—The project includes a brownfield  
22 site as defined by section 101(39) of the  
23 Comprehensive Environmental Response,  
24 Compensation, and Liability Act of 1980  
25 (42 U.S.C. 9601), including a site de-

scribed in subparagraph (D)(ii)(II)(aa) thereof.

“(iii) STATE AND LOCAL SUPPORT.—

The project receives specific State or local government resources which will support the project in an amount equal to at least \$5,000,000. For purposes of the preceding sentence, the term ‘resources’ includes tax abatement benefits and contributions in kind.

“(iv) SIZE.—The project includes at least one of the following:

“(I) At least 1,000,000 square feet of building.

“(II) At least 20 acres.

“(v) USE OF TAX BENEFIT.—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

“(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

1                   “(II) Compliance with certifi-  
2                   cation standards cited under clause  
3                   (i).

4                   “(III) The purchase, remediation,  
5                   and foundation construction and prep-  
6                   aration of the brownfields site.

7                   “(vi) PROHIBITED FACILITIES.—An  
8                   issue shall not be treated as an issue de-  
9                   scribed in subsection (a)(14) if any pro-  
10                  ceeds of such issue are used to provide any  
11                  facility the principal business of which is  
12                  the sale of food or alcoholic beverages for  
13                  consumption on the premises.

14                  “(vii) EMPLOYMENT.—The project is  
15                  projected to provide permanent employ-  
16                  ment of at least 1,500 full time equivalents  
17                  (150 full time equivalents in rural States)  
18                  when completed and construction employ-  
19                  ment of at least 1,000 full time equivalents  
20                  (100 full time equivalents in rural States).

21                  The application shall include an independent  
22                  analysis which describes the project’s economic  
23                  impact, including the amount of projected em-  
24                  ployment.

1           “(B) PROJECT DESCRIPTION.—Each appli-  
2           cation described in subparagraph (A) shall con-  
3           tain for each project a description of—

4                   “(i) the amount of electric consump-  
5                   tion reduced as compared to conventional  
6                   construction,

7                   “(ii) the amount of sulfur dioxide  
8                   daily emissions reduced compared to coal  
9                   generation,

10                   “(iii) the amount of the gross in-  
11                   stalled capacity of the project’s solar pho-  
12                   tovoltaic capacity measured in megawatts,  
13                   and

14                   “(iv) the amount, in megawatts, of  
15                   the project’s fuel cell energy generation.

16           “(5) CERTIFICATION OF USE OF TAX BEN-  
17           EFIT.—No later than 30 days after the completion  
18           of the project, each project must certify to the Sec-  
19           retary that the net benefit of the tax-exempt financ-  
20           ing was used for the purposes described in para-  
21           graph (4).

22           “(6) DEFINITIONS.—For purposes of this sub-  
23           section—

24                   “(A) RURAL STATE.—The term ‘rural  
25                   State’ means any State which has—

1 “(i) a population of less than  
2 4,500,000 according to the 2000 census,

3 “(ii) a population density of less than  
4 150 people per square mile according to  
5 the 2000 census, and

6 “(iii) increased in population by less  
7 than half the rate of the national increase  
8 between the 1990 and 2000 censuses.

9 “(B) LOCAL GOVERNMENT.—The term  
10 ‘local government’ has the meaning given such  
11 term by section 1393(a)(5).

12 “(C) NET BENEFIT OF TAX-EXEMPT FI-  
13 NANCING.—The term ‘net benefit of tax-exempt  
14 financing’ means the present value of the inter-  
15 est savings (determined by a calculation estab-  
16 lished by the Secretary) which result from the  
17 tax-exempt status of the bonds.

18 “(7) AGGREGATE FACE AMOUNT OF TAX-EX-  
19 EMPT FINANCING.—

20 “(A) IN GENERAL.—An issue shall not be  
21 treated as an issue described in subsection  
22 (a)(14) if the aggregate face amount of bonds  
23 issued by the State or local government pursu-  
24 ant thereto for a project (when added to the ag-  
25 gregate face amount of bonds previously so

1           issued for such project) exceeds an amount des-  
 2           ignated by the Secretary as part of the designa-  
 3           tion.

4           “(B) LIMITATION ON AMOUNT OF  
 5           BONDS.—The Secretary may not allocate au-  
 6           thority to issue qualified green building and  
 7           sustainable design project bonds in an aggre-  
 8           gate face amount exceeding \$2,000,000,000.

9           “(8) TERMINATION.—Subsection (a)(14) shall  
 10          not apply with respect to any bond issued after Sep-  
 11          tember 30, 2009.

12          “(9) TREATMENT OF CURRENT REFUNDING  
 13          BONDS.—Paragraphs (7)(B) and (8) shall not apply  
 14          to any bond (or series of bonds) issued to refund a  
 15          bond issued under subsection (a)(14) before October  
 16          1, 2009, if—

17               “(A) the average maturity date of the issue  
 18               of which the refunding bond is a part is not  
 19               later than the average maturity date of the  
 20               bonds to be refunded by such issue,

21               “(B) the amount of the refunding bond  
 22               does not exceed the outstanding amount of the  
 23               refunded bond, and

24               “(C) the net proceeds of the refunding  
 25               bond are used to redeem the refunded bond not

1 later than 90 days after the date of the  
2 issuance of the refunding bond.

3 For purposes of subparagraph (A), average maturity shall  
4 be determined in accordance with section 147(b)(2)(A).”.

5 (c) EXEMPTION FROM GENERAL STATE VOLUME  
6 CAPS.—Paragraph (3) of section 146(g) (relating to ex-  
7 ception for certain bonds) is amended—

8 (1) by striking “or (13)” and inserting “(13),  
9 or (14)”, and

10 (2) by striking “and qualified public educational  
11 facilities” and inserting “qualified public educational  
12 facilities, and qualified green building and sustain-  
13 able design projects”.

14 (d) ACCOUNTABILITY.—Each issuer shall maintain,  
15 on behalf of each project, an interest bearing reserve ac-  
16 count equal to 1 percent of the net proceeds of any bond  
17 issued under this section for such project. Not later than  
18 5 years after the date of issuance, the Secretary of the  
19 Treasury, after consultation with the Administrator of the  
20 Environmental Protection Agency, shall determine wheth-  
21 er the project financed with such bonds has substantially  
22 complied with the terms and conditions described in sec-  
23 tion 142(l)(4) of the Internal Revenue Code of 1986 (as  
24 added by this section). If the Secretary, after such con-  
25 sultation, certifies that the project has substantially com-

1 plied with such terms and conditions and meets the com-  
 2 mitments set forth in the application for such project de-  
 3 scribed in section 142(l)(4) of such Code, amounts in the  
 4 reserve account, including all interest, shall be released to  
 5 the project. If the Secretary determines that the project  
 6 has not substantially complied with such terms and condi-  
 7 tions, amounts in the reserve account, including all inter-  
 8 est, shall be paid to the United States Treasury.

9 (e) EFFECTIVE DATE.—The amendments made by  
 10 this section shall apply to bonds issued after December  
 11 31, 2004.

## 12 **Subtitle B—Manufacturing**

## 13 **Relating to Films**

### 14 **SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELE-**

### 15 **VISION PRODUCTIONS.**

16 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 17 ter 1 is amended by inserting after section 180 the fol-  
 18 lowing new section:

### 19 **“SEC. 181. TREATMENT OF QUALIFIED FILM AND TELE-**

### 20 **VISION PRODUCTIONS.**

21 “(a) ELECTION TO TREAT CERTAIN COSTS OF  
 22 QUALIFIED FILM AND TELEVISION PRODUCTIONS AS EX-  
 23 PENSES.—

24 “(1) IN GENERAL.—A taxpayer may elect to  
 25 treat the cost of any qualified film or television pro-



duction as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

“(2) DOLLAR LIMITATION.—

“(A) IN GENERAL.—The aggregate cost which may be taken into account under paragraph (1) with respect to each qualified film or television production shall not exceed \$15,000,000.

“(B) HIGHER DOLLAR LIMITATION FOR PRODUCTIONS IN CERTAIN AREAS.—In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

“(i) a low-income community under section 45D, or

“(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa–1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting ‘\$20,000,000’ for ‘\$15,000,000’.

“(b) AMORTIZATION OF REMAINING COSTS.—

“(1) IN GENERAL.—If an election is made under subsection (a) with respect to any qualified

1 film or television production, that portion of the  
 2 basis of such production in excess of the amount  
 3 taken into account under subsection (a) shall be al-  
 4 lowed as a deduction ratably over the 36-month pe-  
 5 riod beginning with the month in which such produc-  
 6 tion is placed in service.

7 “(2) NO OTHER DEDUCTION OR AMORTIZATION  
 8 DEDUCTION ALLOWABLE.—With respect to the basis  
 9 of any qualified film or television production de-  
 10 scribed in paragraph (1), no other depreciation or  
 11 amortization deduction shall be allowable.

12 “(c) ELECTION.—

13 “(1) IN GENERAL.—An election under sub-  
 14 section (a) with respect to any qualified film or tele-  
 15 vision production shall be made in such manner as  
 16 prescribed by the Secretary and by the due date (in-  
 17 cluding extensions) for filing the taxpayer’s return of  
 18 tax under this chapter for the taxable year in which  
 19 costs of the production are first incurred.

20 “(2) REVOCATION OF ELECTION.—Any election  
 21 made under subsection (a) may not be revoked with-  
 22 out the consent of the Secretary.

23 “(d) QUALIFIED FILM OR TELEVISION PRODUC-  
 24 TION.—For purposes of this section—

1           “(1) IN GENERAL.—The term ‘qualified film or  
2       television production’ means any production de-  
3       scribed in paragraph (2) if 75 percent of the total  
4       compensation of the production is qualified com-  
5       pensation.

6           “(2) PRODUCTION.—

7               “(A) IN GENERAL.—A production is de-  
8       scribed in this paragraph if such production is  
9       property described in section 168(f)(3). For  
10      purposes of a television series, only the first 44  
11      episodes of such series may be taken into ac-  
12      count.

13              “(B) EXCEPTION.—A production is not de-  
14      scribed in this paragraph if records are required  
15      under section 2257 of title 18, United States  
16      Code, to be maintained with respect to any per-  
17      former in such production.

18           “(3) QUALIFIED COMPENSATION.—For pur-  
19      poses of paragraph (1)—

20               “(A) IN GENERAL.—The term ‘qualified  
21      compensation’ means compensation for services  
22      performed in the United States by actors, direc-  
23      tors, producers, and other relevant production  
24      personnel.

1                   “(B) PARTICIPATIONS AND RESIDUALS EX-  
 2                   CLUDED.—The term ‘compensation’ does not  
 3                   include participations and residuals (as defined  
 4                   in section 167(g)(7)(B)).

5           “(e) APPLICATION OF CERTAIN OTHER RULES.—For  
 6           purposes of this section, rules similar to the rules of sub-  
 7           sections (b)(2) and (c)(4) of section 194 shall apply.

8           “(f) TERMINATION.—This section shall not apply to  
 9           qualified film and television productions commencing after  
 10          December 31, 2008.”.

11          (b) CONFORMING AMENDMENT.—The table of sec-  
 12          tions for part VI of subchapter B of chapter 1 is amended  
 13          by inserting after the item relating to section 180 the fol-  
 14          lowing new item:

“Sec. 181. Treatment of qualified film and television produc-  
 tions.”.

15          (c) EFFECTIVE DATE.—The amendments made by  
 16          this section shall apply to qualified film and television pro-  
 17          ductions (as defined in section 181(d)(1) of the Internal  
 18          Revenue Code of 1986, as added by this section) com-  
 19          mencing after the date of the enactment of this Act.

20       **SEC. 322. MODIFICATION OF APPLICATION OF INCOME**  
 21               **FORECAST METHOD OF DEPRECIATION.**

22          (a) IN GENERAL.—Section 167(g) (relating to depre-  
 23          ciation under income forecast method) is amended by add-  
 24          ing at the end the following new paragraph:

1           “(7) TREATMENT OF PARTICIPATIONS AND RE-  
2       SIDUALS.—

3           “(A) IN GENERAL.—For purposes of deter-  
4       mining the depreciation deduction allowable  
5       with respect to a property under this sub-  
6       section, the taxpayer may include participations  
7       and residuals with respect to such property in  
8       the adjusted basis of such property for the tax-  
9       able year in which the property is placed in  
10      service, but only to the extent that such partici-  
11      pations and residuals relate to income estimated  
12      (for purposes of this subsection) to be earned in  
13      connection with the property before the close of  
14      the 10th taxable year referred to in paragraph  
15      (1)(A).

16          “(B) PARTICIPATIONS AND RESIDUALS.—  
17      For purposes of this paragraph, the term ‘par-  
18      ticipations and residuals’ means, with respect to  
19      any property, costs the amount of which by con-  
20      tract varies with the amount of income earned  
21      in connection with such property.

22          “(C) SPECIAL RULES RELATING TO RE-  
23      COMPUTATION YEARS.—If the adjusted basis of  
24      any property is determined under this para-  
25      graph, paragraph (4) shall be applied by sub-

stituting ‘for each taxable year in such period’  
for ‘for such period’.

“(D) OTHER SPECIAL RULES.—

“(i) PARTICIPATIONS AND RESIDUALS.—Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

“(ii) COORDINATION WITH OTHER RULES.—Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B) or sections 263, 263A, 404, 419, or 461(h).

“(E) AUTHORITY TO MAKE ADJUSTMENTS.—The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.”.

(b) DETERMINATION OF INCOME.—Section 167(g)(5)

(relating to special rules) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and

1 (G), respectively, and inserting after subparagraph (D)  
 2 the following new subparagraph:

3 “(E) TREATMENT OF DISTRIBUTION  
 4 COSTS.—For purposes of this subsection, the  
 5 income with respect to any property shall be the  
 6 taxpayer’s gross income from such property.”.

7 (c) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to property placed in service after  
 9 the date of the enactment of this Act.

## 10 **Subtitle C—Manufacturing** 11 **Relating to Timber**

### 12 **SEC. 331. EXPENSING OF CERTAIN REFORESTATION EX-** 13 **PENDITURES.**

14 (a) IN GENERAL.—So much of subsection (b) of sec-  
 15 tion 194 (relating to amortization of reforestation expendi-  
 16 tures) as precedes paragraph (2) is amended to read as  
 17 follows:

18 “(b) TREATMENT AS EXPENSES.—

19 “(1) ELECTION TO TREAT CERTAIN REFOREST-  
 20 ATION EXPENDITURES AS EXPENSES.—

21 “(A) IN GENERAL.—In the case of any  
 22 qualified timber property with respect to which  
 23 the taxpayer has made (in accordance with reg-  
 24 ulations prescribed by the Secretary) an election  
 25 under this subsection, the taxpayer shall treat

1 reforestation expenditures which are paid or in-  
2 curred during the taxable year with respect to  
3 such property as an expense which is not  
4 chargeable to capital account. The reforestation  
5 expenditures so treated shall be allowed as a de-  
6 duction.

7 “(B) DOLLAR LIMITATION.—The aggre-  
8 gate amount of reforestation expenditures which  
9 may be taken into account under subparagraph  
10 (A) with respect to each qualified timber prop-  
11 erty for any taxable year shall not exceed  
12 \$10,000 (\$5,000 in the case of a separate re-  
13 turn by a married individual (as defined in sec-  
14 tion 7703)).”.

15 (b) NET AMORTIZABLE BASIS.—Section 194(c)(2)  
16 (defining amortizable basis) is amended by inserting  
17 “which have not been taken into account under subsection  
18 (b)” after “expenditures”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Section 194(b) is amended by striking para-  
21 graphs (3) and (4).

22 (2) Section 194(b)(2) is amended by striking  
23 “paragraph (1)” both places it appears and inserting  
24 “paragraph (1)(B)”.



1           (3) Section 194(c) is amended by striking para-  
2       graph (4) and inserting the following new para-  
3       graphs:

4           “(4) TREATMENT OF TRUSTS AND ESTATES.—

5               “(A) IN GENERAL.—Except as provided in  
6       subparagraph (B), this section shall not apply  
7       to trusts and estates.

8               “(B) AMORTIZATION DEDUCTION AL-  
9       LOWED TO ESTATES.—The benefit of the de-  
10      duction for amortization provided by subsection  
11      (a) shall be allowed to estates in the same man-  
12      ner as in the case of an individual. The allow-  
13      able deduction shall be apportioned between the  
14      income beneficiary and the fiduciary under reg-  
15      ulations prescribed by the Secretary. Any  
16      amount so apportioned to a beneficiary shall be  
17      taken into account for purposes of determining  
18      the amount allowable as a deduction under sub-  
19      section (a) to such beneficiary.

20           “(5) APPLICATION WITH OTHER DEDUC-  
21      TIONS.—No deduction shall be allowed under any  
22      other provision of this chapter with respect to any  
23      expenditure with respect to which a deduction is al-  
24      lowed or allowable under this section to the tax-  
25      payer.”.

1 (4) The heading for section 194 is amended by  
 2 striking “**AMORTIZATION**” and inserting “**TREAT-**  
 3 **MENT**”.

4 (5) The item relating to section 194 in the table  
 5 of sections for part VI of subchapter B of chapter  
 6 1 is amended by striking “Amortization” and insert-  
 7 ing “Treatment”.

8 (d) REPEAL OF REFORESTATION CREDIT.—

9 (1) IN GENERAL.—Section 46 (relating to  
 10 amount of credit) is amended—

11 (A) by adding “and” at the end of para-  
 12 graph (1),

13 (B) by striking “, and” at the end of para-  
 14 graph (2) and inserting a period, and

15 (C) by striking paragraph (3).

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 48 is amended—

18 (i) by striking subsection (b),

19 (ii) by striking “this subsection” in  
 20 paragraph (5) of subsection (a) and insert-  
 21 ing “subsection (a)”, and

22 (iii) by redesignating such paragraph  
 23 (5) as subsection (b).

24 (B) The heading for section 48 is amended  
 25 by striking “; **REFORESTATION CREDIT**”.

1 (C) The item relating to section 48 in the  
 2 table of sections for subpart E of part IV of  
 3 subchapter A of chapter 1 is amended by strik-  
 4 ing “, reforestation credit”.

5 (D) Section 50(c)(3) is amended by strik-  
 6 ing “or reforestation credit”.

7 (e) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply with respect to expenditures paid  
 9 or incurred after the date of the enactment of this Act.

10 **SEC. 332. ELECTION TO TREAT CUTTING OF TIMBER AS A**  
 11 **SALE OR EXCHANGE.**

12 Any election under section 631(a) of the Internal  
 13 Revenue Code of 1986 made for a taxable year ending on  
 14 or before the date of the enactment of this Act may be  
 15 revoked by the taxpayer for any taxable year ending after  
 16 such date. For purposes of determining whether the tax-  
 17 payer may make a further election under such section,  
 18 such election (and any revocation under this section) shall  
 19 not be taken into account.

20 **SEC. 333. CAPITAL GAIN TREATMENT UNDER SECTION**  
 21 **631(b) TO APPLY TO OUTRIGHT SALES BY**  
 22 **LANDOWNERS.**

23 (a) IN GENERAL.—The first sentence of section  
 24 631(b) (relating to disposal of timber with a retained eco-  
 25 nomic interest) is amended by striking “retains an eco-

1 nomic interest in such timber” and inserting “either re-  
 2 tains an economic interest in such timber or makes an  
 3 outright sale of such timber”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) The third sentence of section 631(b) is  
 6 amended by striking “The date of disposal” and in-  
 7 serting “In the case of disposal of timber with a re-  
 8 tained economic interest, the date of disposal”.

9 (2) The heading for section 631(b) is amended  
 10 by striking “WITH A RETAINED ECONOMIC INTER-  
 11 EST”.

12 (c) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to sales after the date of the enact-  
 14 ment of this Act.

15 **SEC. 334. MODIFICATION OF SAFE HARBOR RULES FOR**  
 16 **TIMBER REITS.**

17 (a) EXPANSION OF PROHIBITED TRANSACTION SAFE  
 18 HARBOR.—Section 857(b)(6) (relating to income from  
 19 prohibited transactions) is amended by redesignating sub-  
 20 paragraphs (D) and (E) as subparagraphs (E) and (F),  
 21 respectively, and by inserting after subparagraph (C) the  
 22 following new subparagraph:

23 “(D) CERTAIN SALES NOT TO CONSTITUTE  
 24 PROHIBITED TRANSACTIONS.—For purposes of  
 25 this part, the term ‘prohibited transaction’ does

1 not include a sale of property which is a real es-  
2 tate asset (as defined in section 856(c)(5)(B))  
3 if—

4 “(i) the trust held the property for  
5 not less than 4 years in connection with  
6 the trade or business of producing timber,

7 “(ii) the aggregate expenditures made  
8 by the trust, or a partner of the trust, dur-  
9 ing the 4-year period preceding the date of  
10 sale which—

11 “(I) are includible in the basis of  
12 the property (other than timberland  
13 acquisition expenditures), and

14 “(II) are directly related to oper-  
15 ation of the property for the produc-  
16 tion of timber or for the preservation  
17 of the property for use as timberland,  
18 do not exceed 30 percent of the net selling  
19 price of the property,

20 “(iii) the aggregate expenditures made  
21 by the trust, or a partner of the trust, dur-  
22 ing the 4-year period preceding the date of  
23 sale which—

1           “(I) are includible in the basis of  
2           the property (other than timberland  
3           acquisition expenditures), and

4           “(II) are not directly related to  
5           operation of the property for the pro-  
6           duction of timber, or for the preserva-  
7           tion of the property for use as  
8           timberland,

9           do not exceed 5 percent of the net selling  
10          price of the property,

11          “(iv)(I) during the taxable year the  
12          trust does not make more than 7 sales of  
13          property (other than sales of foreclosure  
14          property or sales to which section 1033 ap-  
15          plies), or

16          “(II) the aggregate adjusted bases (as  
17          determined for purposes of computing  
18          earnings and profits) of property (other  
19          than sales of foreclosure property or sales  
20          to which section 1033 applies) sold during  
21          the taxable year does not exceed 10 per-  
22          cent of the aggregate bases (as so deter-  
23          mined) of all of the assets of the trust as  
24          of the beginning of the taxable year,

“(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, and

“(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

## **TITLE IV—ADDITIONAL PROVISIONS**

### **Subtitle A—Provisions Designed To Curtail Tax Shelters**

#### **SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) **IN GENERAL.**—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

1       “(n) CLARIFICATION OF ECONOMIC SUBSTANCE  
2 DOCTRINE; ETC.—

3               “(1) GENERAL RULES.—

4                       “(A) IN GENERAL.—In any case in which  
5 a court determines that the economic substance  
6 doctrine is relevant for purposes of this title to  
7 a transaction (or series of transactions), such  
8 transaction (or series of transactions) shall have  
9 economic substance only if the requirements of  
10 this paragraph are met.

11                      “(B) DEFINITION OF ECONOMIC SUB-  
12 STANCE.—For purposes of subparagraph (A)—

13                               “(i) IN GENERAL.—A transaction has  
14 economic substance only if—

15                                       “(I) the transaction changes in a  
16 meaningful way (apart from Federal  
17 tax effects) the taxpayer’s economic  
18 position, and

19                                       “(II) the taxpayer has a substan-  
20 tial nontax purpose for entering into  
21 such transaction and the transaction  
22 is a reasonable means of accom-  
23 plishing such purpose.

24                      In applying subclause (II), a purpose of  
25 achieving a financial accounting benefit



1 shall not be taken into account in deter-  
2 mining whether a transaction has a sub-  
3 stantial nontax purpose if the origin of  
4 such financial accounting benefit is a re-  
5 duction of income tax.

6 “(ii) SPECIAL RULE WHERE TAX-  
7 PAYER RELIES ON PROFIT POTENTIAL.—A  
8 transaction shall not be treated as having  
9 economic substance by reason of having a  
10 potential for profit unless—

11 “(I) the present value of the rea-  
12 sonably expected pre-tax profit from  
13 the transaction is substantial in rela-  
14 tion to the present value of the ex-  
15 pected net tax benefits that would be  
16 allowed if the transaction were re-  
17 spected, and

18 “(II) the reasonably expected  
19 pre-tax profit from the transaction ex-  
20 ceeds a risk-free rate of return.

21 “(C) TREATMENT OF FEES AND FOREIGN  
22 TAXES.—Fees and other transaction expenses  
23 and foreign taxes shall be taken into account as  
24 expenses in determining pre-tax profit under  
25 subparagraph (B)(ii).

1           “(2) SPECIAL RULES FOR TRANSACTIONS WITH  
2       TAX-INDIFFERENT PARTIES.—

3           “(A) SPECIAL RULES FOR FINANCING  
4       TRANSACTIONS.—The form of a transaction  
5       which is in substance the borrowing of money  
6       or the acquisition of financial capital directly or  
7       indirectly from a tax-indifferent party shall not  
8       be respected if the present value of the deduc-  
9       tions to be claimed with respect to the trans-  
10      action is substantially in excess of the present  
11      value of the anticipated economic returns of the  
12      person lending the money or providing the fi-  
13      nancial capital. A public offering shall be treat-  
14      ed as a borrowing, or an acquisition of financial  
15      capital, from a tax-indifferent party if it is rea-  
16      sonably expected that at least 50 percent of the  
17      offering will be placed with tax-indifferent par-  
18      ties.

19          “(B) ARTIFICIAL INCOME SHIFTING AND  
20      BASIS ADJUSTMENTS.—The form of a trans-  
21      action with a tax-indifferent party shall not be  
22      respected if—

23           “(i) it results in an allocation of in-  
24      come or gain to the tax-indifferent party in

1 excess of such party's economic income or  
2 gain, or

3 “(ii) it results in a basis adjustment  
4 or shifting of basis on account of over-  
5 stating the income or gain of the tax-indif-  
6 ferent party.

7 “(3) DEFINITIONS AND SPECIAL RULES.—For  
8 purposes of this subsection—

9 “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
10 The term ‘economic substance doctrine’ means  
11 the common law doctrine under which tax bene-  
12 fits under subtitle A with respect to a trans-  
13 action are not allowable if the transaction does  
14 not have economic substance or lacks a business  
15 purpose.

16 “(B) TAX-INDIFFERENT PARTY.—The  
17 term ‘tax-indifferent party’ means any person  
18 or entity not subject to tax imposed by subtitle  
19 A. A person shall be treated as a tax-indifferent  
20 party with respect to a transaction if the items  
21 taken into account with respect to the trans-  
22 action have no substantial impact on such per-  
23 son's liability under subtitle A.

24 “(C) EXCEPTION FOR PERSONAL TRANS-  
25 ACTIONS OF INDIVIDUALS.—In the case of an

individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

“(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

“(I) depreciation,

“(II) any tax credit, or

“(III) any other deduction as provided in guidance by the Secretary, and

“(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection

1 shall be construed as being in addition to any such  
2 other rule of law.

3 “(5) REGULATIONS.—The Secretary shall pre-  
4 scribe such regulations as may be necessary or ap-  
5 propriate to carry out the purposes of this sub-  
6 section. Such regulations may include exemptions  
7 from the application of this subsection.”.

8 (b) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to transactions entered into after  
10 the date of the enactment of this Act.

11 **SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORT-**  
12 **ABLE TRANSACTION.**

13 (a) IN GENERAL.—Part I of subchapter B of chapter  
14 68 (relating to assessable penalties) is amended by insert-  
15 ing after section 6707 the following new section:

16 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**  
17 **ABLE TRANSACTION INFORMATION WITH RE-**  
18 **TURN OR STATEMENT.**

19 “(a) IMPOSITION OF PENALTY.—Any person who  
20 fails to include on any return or statement any informa-  
21 tion with respect to a reportable transaction which is re-  
22 quired under section 6011 to be included with such return  
23 or statement shall pay a penalty in the amount determined  
24 under subsection (b).

25 “(b) AMOUNT OF PENALTY.—

1           “(1) IN GENERAL.—Except as provided in para-  
 2           graphs (2) and (3), the amount of the penalty under  
 3           subsection (a) shall be \$50,000.

4           “(2) LISTED TRANSACTION.—The amount of  
 5           the penalty under subsection (a) with respect to a  
 6           listed transaction shall be \$100,000.

7           “(3) INCREASE IN PENALTY FOR LARGE ENTI-  
 8           TIES AND HIGH NET WORTH INDIVIDUALS.—

9           “(A) IN GENERAL.—In the case of a fail-  
 10          ure under subsection (a) by—

11                   “(i) a large entity, or

12                   “(ii) a high net worth individual,  
 13          the penalty under paragraph (1) or (2) shall be  
 14          twice the amount determined without regard to  
 15          this paragraph.

16          “(B) LARGE ENTITY.—For purposes of  
 17          subparagraph (A), the term ‘large entity’  
 18          means, with respect to any taxable year, a per-  
 19          son (other than a natural person) with gross re-  
 20          ceipts in excess of \$10,000,000 for the taxable  
 21          year in which the reportable transaction occurs  
 22          or the preceding taxable year. Rules similar to  
 23          the rules of paragraph (2) and subparagraphs  
 24          (B), (C), and (D) of paragraph (3) of section

1           448(c) shall apply for purposes of this subpara-  
2           graph.

3           “(C) HIGH NET WORTH INDIVIDUAL.—For  
4           purposes of subparagraph (A), the term ‘high  
5           net worth individual’ means, with respect to a  
6           reportable transaction, a natural person whose  
7           net worth exceeds \$2,000,000 immediately be-  
8           fore the transaction.

9           “(c) DEFINITIONS.—For purposes of this section—

10           “(1) REPORTABLE TRANSACTION.—The term  
11           ‘reportable transaction’ means any transaction with  
12           respect to which information is required to be in-  
13           cluded with a return or statement because, as deter-  
14           mined under regulations prescribed under section  
15           6011, such transaction is of a type which the Sec-  
16           retary determines as having a potential for tax  
17           avoidance or evasion.

18           “(2) LISTED TRANSACTION.—Except as pro-  
19           vided in regulations, the term ‘listed transaction’  
20           means a reportable transaction which is the same as,  
21           or substantially similar to, a transaction specifically  
22           identified by the Secretary as a tax avoidance trans-  
23           action for purposes of section 6011.

24           “(d) AUTHORITY TO RESCIND PENALTY.—

1           “(1) IN GENERAL.—The Commissioner of In-  
2           ternal Revenue may rescind all or any portion of any  
3           penalty imposed by this section with respect to any  
4           violation if—

5                   “(A) the violation is with respect to a re-  
6                   portable transaction other than a listed trans-  
7                   action,

8                   “(B) the person on whom the penalty is  
9                   imposed has a history of complying with the re-  
10                  quirements of this title,

11                  “(C) it is shown that the violation is due  
12                  to an unintentional mistake of fact;

13                  “(D) imposing the penalty would be  
14                  against equity and good conscience, and

15                  “(E) rescinding the penalty would promote  
16                  compliance with the requirements of this title  
17                  and effective tax administration.

18           “(2) DISCRETION.—The exercise of authority  
19           under paragraph (1) shall be at the sole discretion  
20           of the Commissioner and may be delegated only to  
21           the head of the Office of Tax Shelter Analysis. The  
22           Commissioner, in the Commissioner’s sole discretion,  
23           may establish a procedure to determine if a penalty  
24           should be referred to the Commissioner or the head



1 of such Office for a determination under paragraph  
2 (1).

3 “(3) NO APPEAL.—Notwithstanding any other  
4 provision of law, any determination under this sub-  
5 section may not be reviewed in any administrative or  
6 judicial proceeding.

7 “(4) RECORDS.—If a penalty is rescinded under  
8 paragraph (1), the Commissioner shall place in the  
9 file in the Office of the Commissioner the opinion of  
10 the Commissioner or the head of the Office of Tax  
11 Shelter Analysis with respect to the determination,  
12 including—

13 “(A) the facts and circumstances of the  
14 transaction,

15 “(B) the reasons for the rescission, and

16 “(C) the amount of the penalty rescinded.

17 “(5) REPORT.—The Commissioner shall each  
18 year report to the Committee on Ways and Means  
19 of the House of Representatives and the Committee  
20 on Finance of the Senate—

21 “(A) a summary of the total number and  
22 aggregate amount of penalties imposed, and re-  
23 scinded, under this section, and

1           “(B) a description of each penalty re-  
2           scinded under this subsection and the reasons  
3           therefor.

4           “(e) PENALTY REPORTED TO SEC.—In the case of  
5 a person—

6           “(1) which is required to file periodic reports  
7           under section 13 or 15(d) of the Securities Ex-  
8           change Act of 1934 or is required to be consolidated  
9           with another person for purposes of such reports,  
10          and

11          “(2) which—

12                  “(A) is required to pay a penalty under  
13                  this section with respect to a listed transaction,

14                  “(B) is required to pay a penalty under  
15                  section 6662A with respect to any reportable  
16                  transaction at a rate prescribed under section  
17                  6662A(c), or

18                  “(C) is required to pay a penalty under  
19                  section 6662B with respect to any noneconomic  
20                  substance transaction,

21 the requirement to pay such penalty shall be disclosed in  
22 such reports filed by such person for such periods as the  
23 Secretary shall specify. Failure to make a disclosure in  
24 accordance with the preceding sentence shall be treated

1 as a failure to which the penalty under subsection (b)(2)  
2 applies.

3 “(f) COORDINATION WITH OTHER PENALTIES.—The  
4 penalty imposed by this section is in addition to any pen-  
5 alty imposed under this title.”.

6 (b) DISCLOSURE BY SECRETARY.—

7 (1) IN GENERAL.—Section 6103 is amended by  
8 redesignating subsection (q) as subsection (r) and by  
9 inserting after subsection (p) the following new sub-  
10 section:

11 “(q) DISCLOSURE RELATING TO PAYMENTS OF CER-  
12 TAIN PENALTIES.—Notwithstanding any other provision  
13 of this section, the Secretary shall make public the name  
14 of any person required to pay a penalty described in sec-  
15 tion 6707A(e)(2) and the amount of the penalty.”.

16 (2) RECORDS.—Section 6103(p)(3)(A) is  
17 amended by striking “or (n)” and inserting “(n), or  
18 (q)”.

19 (c) CONFORMING AMENDMENT.—The table of sec-  
20 tions for part I of subchapter B of chapter 68 is amended  
21 by inserting after the item relating to section 6707 the  
22 following:

“Sec. 6707A. Penalty for failure to include reportable transaction  
information with return or statement.”.

23 (d) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to returns and statements the due

1 date for which is after the date of the enactment of this  
2 Act.

3 **SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED**  
4 **TRANSACTIONS AND OTHER REPORTABLE**  
5 **TRANSACTIONS HAVING A SIGNIFICANT TAX**  
6 **AVOIDANCE PURPOSE.**

7 (a) IN GENERAL.—Subchapter A of chapter 68 is  
8 amended by inserting after section 6662 the following new  
9 section:

10 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**  
11 **ALTY ON UNDERSTATEMENTS WITH RESPECT**  
12 **TO REPORTABLE TRANSACTIONS.**

13 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a  
14 reportable transaction understatement for any taxable  
15 year, there shall be added to the tax an amount equal to  
16 20 percent of the amount of such understatement.

17 “(b) REPORTABLE TRANSACTION UNDERSTATE-  
18 MENT.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘reportable trans-  
20 action understatement’ means the sum of—

21 “(A) the product of—

22 “(i) the amount of the increase (if  
23 any) in taxable income which results from  
24 a difference between the proper tax treat-  
25 ment of an item to which this section ap-

1           plies and the taxpayer’s treatment of such  
 2           item (as shown on the taxpayer’s return of  
 3           tax), and

4           “(ii) the highest rate of tax imposed  
 5           by section 1 (section 11 in the case of a  
 6           taxpayer which is a corporation), and

7           “(B) the amount of the decrease (if any)  
 8           in the aggregate amount of credits determined  
 9           under subtitle A which results from a difference  
 10          between the taxpayer’s treatment of an item to  
 11          which this section applies (as shown on the tax-  
 12          payer’s return of tax) and the proper tax treat-  
 13          ment of such item.

14          For purposes of subparagraph (A), any reduction of  
 15          the excess of deductions allowed for the taxable year  
 16          over gross income for such year, and any reduction  
 17          in the amount of capital losses which would (without  
 18          regard to section 1211) be allowed for such year,  
 19          shall be treated as an increase in taxable income.

20          “(2) ITEMS TO WHICH SECTION APPLIES.—This  
 21          section shall apply to any item which is attributable  
 22          to—

23                 “(A) any listed transaction, and

24                 “(B) any reportable transaction (other  
 25                 than a listed transaction) if a significant pur-

1           pose of such transaction is the avoidance or  
2           evasion of Federal income tax.

3           “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED  
4 AND OTHER AVOIDANCE TRANSACTIONS.—

5           “(1) IN GENERAL.—Subsection (a) shall be ap-  
6           plied by substituting ‘30 percent’ for ‘20 percent’  
7           with respect to the portion of any reportable trans-  
8           action understatement with respect to which the re-  
9           quirement of section 6664(d)(2)(A) is not met.

10           “(2) RULES APPLICABLE TO ASSERTION AND  
11 COMPROMISE OF PENALTY.—

12           “(A) IN GENERAL.—Only upon the ap-  
13           proval by the Chief Counsel for the Internal  
14           Revenue Service or the Chief Counsel’s delegate  
15           at the national office of the Internal Revenue  
16           Service may a penalty to which paragraph (1)  
17           applies be included in a 1st letter of proposed  
18           deficiency which allows the taxpayer an oppor-  
19           tunity for administrative review in the Internal  
20           Revenue Service Office of Appeals. If such a  
21           letter is provided to the taxpayer, only the Com-  
22           missioner of Internal Revenue may compromise  
23           all or any portion of such penalty.

24           “(B) APPLICABLE RULES.—The rules of  
25           paragraphs (2), (3), (4), and (5) of section

1           6707A(d) shall apply for purposes of subpara-  
2           graph (A).

3           “(d) DEFINITIONS OF REPORTABLE AND LISTED  
4   TRANSACTIONS.—For purposes of this section, the terms  
5   ‘reportable transaction’ and ‘listed transaction’ have the  
6   respective meanings given to such terms by section  
7   6707A(c).

8           “(e) SPECIAL RULES.—

9           “(1) COORDINATION WITH PENALTIES, ETC.,  
10   ON OTHER UNDERSTATEMENTS.—In the case of an  
11   understatement (as defined in section 6662(d)(2))—

12           “(A) the amount of such understatement  
13           (determined without regard to this paragraph)  
14           shall be increased by the aggregate amount of  
15           reportable transaction understatements and  
16           noneconomic substance transaction understate-  
17           ments for purposes of determining whether  
18           such understatement is a substantial under-  
19           statement under section 6662(d)(1), and

20           “(B) the addition to tax under section  
21           6662(a) shall apply only to the excess of the  
22           amount of the substantial understatement (if  
23           any) after the application of subparagraph (A)  
24           over the aggregate amount of reportable trans-

1           action understatements and noneconomic sub-  
2           stance transaction understatements.

3           “(2) COORDINATION WITH OTHER PEN-  
4           ALTIES.—

5           “(A) APPLICATION OF FRAUD PENALTY.—  
6           References to an underpayment in section 6663  
7           shall be treated as including references to a re-  
8           portable transaction understatement and a non-  
9           economic substance transaction understatement.

10          “(B) NO DOUBLE PENALTY.—This section  
11          shall not apply to any portion of an understate-  
12          ment on which a penalty is imposed under sec-  
13          tion 6662B or 6663.

14          “(3) SPECIAL RULE FOR AMENDED RE-  
15          TURNS.—Except as provided in regulations, in no  
16          event shall any tax treatment included with an  
17          amendment or supplement to a return of tax be  
18          taken into account in determining the amount of any  
19          reportable transaction understatement or non-  
20          economic substance transaction understatement if  
21          the amendment or supplement is filed after the ear-  
22          lier of the date the taxpayer is first contacted by the  
23          Secretary regarding the examination of the return or  
24          such other date as is specified by the Secretary.



1                   “(4) NONECONOMIC SUBSTANCE TRANS-  
 2                   ACTION UNDERSTATEMENT.—For purposes of  
 3                   this subsection, the term ‘noneconomic sub-  
 4                   stance transaction understatement’ has the  
 5                   meaning given such term by section 6662B(c).

6                   “(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the  
 Securities and Exchange Commission, see section  
 6707A(e).”.**

7           (b) DETERMINATION OF OTHER UNDERSTATE-  
 8           MENTS.—Subparagraph (A) of section 6662(d)(2) is  
 9           amended by adding at the end the following flush sen-  
 10          tence:

11                   “The excess under the preceding sentence shall  
 12                   be determined without regard to items to which  
 13                   section 6662A applies and without regard to  
 14                   items with respect to which a penalty is im-  
 15                   posed by section 6662B.”.

16          (c) REASONABLE CAUSE EXCEPTION.—

17                   (1) IN GENERAL.—Section 6664 is amended by  
 18                   adding at the end the following new subsection:

19                   “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-  
 20          ABLE TRANSACTION UNDERSTATEMENTS.—

21                   “(1) IN GENERAL.—No penalty shall be im-  
 22                   posed under section 6662A with respect to any por-  
 23                   tion of a reportable transaction understatement if it  
 24                   is shown that there was a reasonable cause for such

1       portion and that the taxpayer acted in good faith  
2       with respect to such portion.

3               “(2) SPECIAL RULES.—Paragraph (1) shall not  
4       apply to any reportable transaction understatement  
5       unless—

6               “(A) the relevant facts affecting the tax  
7       treatment of the item are adequately disclosed  
8       in accordance with the regulations prescribed  
9       under section 6011,

10              “(B) there is or was substantial authority  
11      for such treatment, and

12              “(C) the taxpayer reasonably believed that  
13      such treatment was more likely than not the  
14      proper treatment.

15      A taxpayer failing to adequately disclose in accord-  
16      ance with section 6011 shall be treated as meeting  
17      the requirements of subparagraph (A) if the penalty  
18      for such failure was rescinded under section  
19      6707A(d).

20              “(3) RULES RELATING TO REASONABLE BE-  
21      LIEF.—For purposes of paragraph (2)(C)—

22              “(A) IN GENERAL.—A taxpayer shall be  
23      treated as having a reasonable belief with re-  
24      spect to the tax treatment of an item only if  
25      such belief—

1 “(i) is based on the facts and law that  
2 exist at the time the return of tax which  
3 includes such tax treatment is filed, and

4 “(ii) relates solely to the taxpayer’s  
5 chances of success on the merits of such  
6 treatment and does not take into account  
7 the possibility that a return will not be au-  
8 dited, such treatment will not be raised on  
9 audit, or such treatment will be resolved  
10 through settlement if it is raised.

11 “(B) CERTAIN OPINIONS MAY NOT BE RE-  
12 LIED UPON.—

13 “(i) IN GENERAL.—An opinion of a  
14 tax advisor may not be relied upon to es-  
15 tablish the reasonable belief of a taxpayer  
16 if—

17 “(I) the tax advisor is described  
18 in clause (ii), or

19 “(II) the opinion is described in  
20 clause (iii).

21 “(ii) DISQUALIFIED TAX ADVISORS.—  
22 A tax advisor is described in this clause if  
23 the tax advisor—

24 “(I) is a material advisor (within  
25 the meaning of section 6111(b)(1))

1 who participates in the organization,  
2 management, promotion, or sale of  
3 the transaction or who is related  
4 (within the meaning of section 267(b)  
5 or 707(b)(1)) to any person who so  
6 participates,

7 “(II) is compensated directly or  
8 indirectly by a material advisor with  
9 respect to the transaction,

10 “(III) has a fee arrangement  
11 with respect to the transaction which  
12 is contingent on all or part of the in-  
13 tended tax benefits from the trans-  
14 action being sustained,

15 “(IV) has an arrangement with  
16 respect to the transaction which pro-  
17 vides that contractual disputes be-  
18 tween the taxpayer and the advisor  
19 are to be settled by arbitration or  
20 which limits damages by reference to  
21 fees paid to the advisor for such  
22 transaction, or

23 “(V) as determined under regula-  
24 tions prescribed by the Secretary, has

1 a disqualifying financial interest with  
 2 respect to the transaction.

3 “(iii) DISQUALIFIED OPINIONS.—For  
 4 purposes of clause (i), an opinion is dis-  
 5 qualified if the opinion—

6 “(I) is based on unreasonable  
 7 factual or legal assumptions (includ-  
 8 ing assumptions as to future events),

9 “(II) unreasonably relies on rep-  
 10 resentations, statements, findings, or  
 11 agreements of the taxpayer or any  
 12 other person,

13 “(III) does not identify and con-  
 14 sider all relevant facts,

15 “(IV) is not signed by all individ-  
 16 uals who are principal authors of the  
 17 opinion, or

18 “(V) fails to meet any other re-  
 19 quirement as the Secretary may pre-  
 20 scribe.”.

21 (2) CONFORMING AMENDMENT.—The heading  
 22 for subsection (c) of section 6664 is amended by in-  
 23 serting “FOR UNDERPAYMENTS” after “EXCEP-  
 24 TION”.

25 (d) CONFORMING AMENDMENTS.—

1           (1) Subparagraph (C) of section 461(i)(3) is  
2           amended by striking “section 6662(d)(2)(C)(iii)”  
3           and inserting “section 1274(b)(3)(C)”.

4           (2) Paragraph (3) of section 1274(b) is amend-  
5           ed—

6                   (A) by striking “(as defined in section  
7                   6662(d)(2)(C)(iii))” in subparagraph (B)(i),  
8                   and

9                   (B) by adding at the end the following new  
10                  subparagraph:

11                   “(C) TAX SHELTER.—For purposes of sub-  
12                   paragraph (B), the term ‘tax shelter’ means—

13                           “(i) a partnership or other entity,

14                           “(ii) any investment plan or arrange-  
15                           ment, or

16                           “(iii) any other plan or arrangement,  
17                   if a significant purpose of such partnership, en-  
18                   tity, plan, or arrangement is the avoidance or  
19                   evasion of Federal income tax.”.

20           (3) Section 6662(d)(2) is amended by striking  
21           subparagraphs (C) and (D).

22           (4) Section 6664(c)(1) is amended by striking  
23           “this part” and inserting “section 6662 or 6663”.

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

4 (6)(A) The heading for section 6662 is amend-  
5 ed to read as follows:

6   **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**  
7                   **ON UNDERPAYMENTS.”.**

8 (B) The table of sections for part II of sub-  
9 chapter A of chapter 68 is amended by striking the  
10 item relating to section 6662 and inserting the fol-  
11 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

15 SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIB-  
16 UTABLE TO TRANSACTIONS LACKING ECO-  
17 NOMIC SUBSTANCE, ETC.

18 (a) IN GENERAL.—Subchapter A of chapter 68 is  
19 amended by inserting after section 6662A the following  
20 new section:

1 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
2 **UTABLE TO TRANSACTIONS LACKING ECO-**  
3 **NOMIC SUBSTANCE, ETC.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an  
5 noneconomic substance transaction understatement for  
6 any taxable year, there shall be added to the tax an  
7 amount equal to 40 percent of the amount of such under-  
8 statement.

9 “(b) REDUCTION OF PENALTY FOR DISCLOSED  
10 TRANSACTIONS.—Subsection (a) shall be applied by sub-  
11 stituting ‘20 percent’ for ‘40 percent’ with respect to the  
12 portion of any noneconomic substance transaction under-  
13 statement with respect to which the relevant facts affect-  
14 ing the tax treatment of the item are adequately disclosed  
15 in the return or a statement attached to the return.

16 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-  
17 DERSTATEMENT.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘noneconomic  
19 substance transaction understatement’ means any  
20 amount which would be an understatement under  
21 section 6662A(b)(1) if section 6662A were applied  
22 by taking into account items attributable to non-  
23 economic substance transactions rather than items  
24 to which section 6662A would apply without regard  
25 to this paragraph.



1           “(2) NONECONOMIC SUBSTANCE TRANS-  
2 ACTION.—The term ‘noneconomic substance trans-  
3 action’ means any transaction if—

4           “(A) there is a lack of economic substance  
5 (within the meaning of section 7701(n)(1)) for  
6 the transaction giving rise to the claimed ben-  
7 efit or the transaction was not respected under  
8 section 7701(n)(2), or

9           “(B) the transaction fails to meet the re-  
10 quirements of any similar rule of law.

11       “(d) RULES APPLICABLE TO COMPROMISE OF PEN-  
12 ALTY.—

13           “(1) IN GENERAL.—If the 1st letter of pro-  
14 posed deficiency which allows the taxpayer an oppor-  
15 tunity for administrative review in the Internal Rev-  
16 enue Service Office of Appeals has been sent with  
17 respect to a penalty to which this section applies,  
18 only the Commissioner of Internal Revenue may  
19 compromise all or any portion of such penalty.

20           “(2) APPLICABLE RULES.—The rules of para-  
21 graphs (2), (3), (4), and (5) of section 6707A(d)  
22 shall apply for purposes of paragraph (1).

23       “(e) COORDINATION WITH OTHER PENALTIES.—Ex-  
24 cept as otherwise provided in this part, the penalty im-

1 posed by this section shall be in addition to any other pen-  
 2 alty imposed by this title.

3 “(f) CROSS REFERENCES.—

“**(1) For coordination of penalty with understate-  
 ments under section 6662 and other special rules,  
 see section 6662A(e).**

“**(2) For reporting of penalty imposed under this  
 section to the Securities and Exchange Commission,  
 see section 6707A(e).”.**

4 (b) CLERICAL AMENDMENT.—The table of sections  
 5 for part II of subchapter A of chapter 68 is amended by  
 6 inserting after the item relating to section 6662A the fol-  
 7 lowing new item:

“Sec. 6662B. Penalty for understatements attributable to trans-  
 actions lacking economic substance, etc.”.

8 (c) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to transactions entered into after  
 10 the date of the enactment of this Act.

11 **SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**  
 12 **MENT PENALTY FOR NONREPORTABLE**  
 13 **TRANSACTIONS.**

14 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-  
 15 TIONS.—Section 6662(d)(1)(B) (relating to special rule  
 16 for corporations) is amended to read as follows:

17 “(B) SPECIAL RULE FOR CORPORA-  
 18 TIONS.—In the case of a corporation other than  
 19 an S corporation or a personal holding company  
 20 (as defined in section 542), there is a substan-  
 21 tial understatement of income tax for any tax-

1           able year if the amount of the understatement  
2           for the taxable year exceeds the lesser of—

3                   “(i) 10 percent of the tax required to  
4                   be shown on the return for the taxable  
5                   year (or, if greater, \$10,000), or

6                   “(ii) \$10,000,000.”.

7           (b) REDUCTION FOR UNDERSTATEMENT OF TAX-  
8 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED  
9 ITEM.—

10           (1) IN GENERAL.—Section 6662(d)(2)(B)(i)  
11           (relating to substantial authority) is amended to  
12           read as follows:

13                   “(i) the tax treatment of any item by  
14                   the taxpayer if the taxpayer had reason-  
15                   able belief that the tax treatment was more  
16                   likely than not the proper treatment, or”.

17           (2) CONFORMING AMENDMENT.—Section  
18           6662(d) is amended by adding at the end the fol-  
19           lowing new paragraph:

20                   “(3) SECRETARIAL LIST.—For purposes of this  
21           subsection, section 6664(d)(2), and section  
22           6694(a)(1), the Secretary may prescribe a list of po-  
23           sitions for which the Secretary believes there is not  
24           substantial authority or there is no reasonable belief  
25           that the tax treatment is more likely than not the

1 proper tax treatment. Such list (and any revisions  
 2 thereof) shall be published in the Federal Register  
 3 or the Internal Revenue Bulletin.”.

4 (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to taxable years beginning after  
 6 the date of the enactment of this Act.

7 **SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**  
 8 **PRIVILEGES RELATING TO TAXPAYER COM-**  
 9 **MUNICATIONS.**

10 (a) IN GENERAL.—Section 7525(b) (relating to sec-  
 11 tion not to apply to communications regarding corporate  
 12 tax shelters) is amended to read as follows:

13 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS  
 14 REGARDING TAX SHELTERS.—The privilege under sub-  
 15 section (a) shall not apply to any written communication  
 16 which is—

17 “(1) between a federally authorized tax practi-  
 18 tioner and—

19 “(A) any person,

20 “(B) any director, officer, employee, agent,  
 21 or representative of the person, or

22 “(C) any other person holding a capital or  
 23 profits interest in the person, and

1           “(2) in connection with the promotion of the di-  
 2       rect or indirect participation of the person in any  
 3       tax shelter (as defined in section 1274(b)(3)(C)).”.

4       (b) EFFECTIVE DATE.—The amendment made by  
 5       this section shall apply to communications made on or  
 6       after the date of the enactment of this Act.

7       **SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

8       (a) IN GENERAL.—Section 6111 (relating to registra-  
 9       tion of tax shelters) is amended to read as follows:

10      **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

11          “(a) IN GENERAL.—Each material advisor with re-  
 12       spect to any reportable transaction shall make a return  
 13       (in such form as the Secretary may prescribe) setting  
 14       forth—

15           “(1) information identifying and describing the  
 16       transaction,

17           “(2) information describing any potential tax  
 18       benefits expected to result from the transaction, and

19           “(3) such other information as the Secretary  
 20       may prescribe.

21       Such return shall be filed not later than the date specified  
 22       by the Secretary.

23       “(b) DEFINITIONS.—For purposes of this section—

24           “(1) MATERIAL ADVISOR.—

1           “(A) IN GENERAL.—The term ‘material  
2           advisor’ means any person—

3                   “(i) who provides any material aid,  
4                   assistance, or advice with respect to orga-  
5                   nizing, managing, promoting, selling, im-  
6                   plementing, insuring, or carrying out any  
7                   reportable transaction, and

8                   “(ii) who directly or indirectly derives  
9                   gross income in excess of the threshold  
10                  amount for such aid, assistance, or advice.

11          “(B) THRESHOLD AMOUNT.—For purposes  
12          of subparagraph (A), the threshold amount is—

13                   “(i) \$50,000 in the case of a report-  
14                   able transaction substantially all of the tax  
15                   benefits from which are provided to nat-  
16                   ural persons, and

17                   “(ii) \$250,000 in any other case.

18          “(2) REPORTABLE TRANSACTION.—The term  
19          ‘reportable transaction’ has the meaning given to  
20          such term by section 6707A(c).

21          “(c) REGULATIONS.—The Secretary may prescribe  
22          regulations which provide—

23                   “(1) that only 1 person shall be required to  
24                   meet the requirements of subsection (a) in cases in

1 which 2 or more persons would otherwise be re-  
 2 quired to meet such requirements,

3 “(2) exemptions from the requirements of this  
 4 section, and

5 “(3) such rules as may be necessary or appro-  
 6 priate to carry out the purposes of this section.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) The item relating to section 6111 in the  
 9 table of sections for subchapter B of chapter 61 is  
 10 amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”.

11 (2)(A) So much of section 6112 as precedes  
 12 subsection (c) thereof is amended to read as follows:

13 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**  
 14 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

15 “(a) IN GENERAL.—Each material advisor (as de-  
 16 fined in section 6111) with respect to any reportable  
 17 transaction (as defined in section 6707A(c)) shall main-  
 18 tain, in such manner as the Secretary may by regulations  
 19 prescribe, a list—

20 “(1) identifying each person with respect to  
 21 whom such advisor acted as such a material advisor  
 22 with respect to such transaction, and

23 “(2) containing such other information as the  
 24 Secretary may by regulations require.

1 This section shall apply without regard to whether a mate-  
 2 rial advisor is required to file a return under section 6111  
 3 with respect to such transaction.”.

4 (B) Section 6112 is amended by redesignating  
 5 subsection (c) as subsection (b).

6 (C) Section 6112(b), as redesignated by sub-  
 7 paragraph (B), is amended—

8 (i) by inserting “written” before “request”  
 9 in paragraph (1)(A), and

10 (ii) by striking “shall prescribe” in para-  
 11 graph (2) and inserting “may prescribe”.

12 (D) The item relating to section 6112 in the  
 13 table of sections for subchapter B of chapter 61 is  
 14 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must  
 keep lists of advisees.”.

15 (3)(A) The heading for section 6708 is amend-  
 16 ed to read as follows:

17 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**  
 18 **WITH RESPECT TO REPORTABLE TRANS-**  
 19 **ACTIONS.”.**

20 (B) The item relating to section 6708 in the  
 21 table of sections for part I of subchapter B of chap-  
 22 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to  
 reportable transactions.”.



1 (c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM  
 2 OF CONFIDENTIALITY.—Subparagraph (A) of section  
 3 6112(b)(1), as redesignated by subsection (b)(2)(B), is  
 4 amended by adding at the end the following new flush sen-  
 5 tence:

6 “For purposes of this section, the identity of any  
 7 person on such list shall not be privileged.”.

8 (d) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-  
 10 graph (2), the amendments made by this section  
 11 shall apply to transactions with respect to which ma-  
 12 terial aid, assistance, or advice referred to in section  
 13 6111(b)(1)(A)(i) of the Internal Revenue Code of  
 14 1986 (as added by this section) is provided after the  
 15 date of the enactment of this Act.

16 (2) NO CLAIM OF CONFIDENTIALITY AGAINST  
 17 DISCLOSURE.—The amendment made by subsection  
 18 (c) shall take effect as if included in the amend-  
 19 ments made by section 142 of the Deficit Reduction  
 20 Act of 1984.

21 **SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO**  
 22 **REGISTER TAX SHELTERS.**

23 (a) IN GENERAL.—Section 6707 (relating to failure  
 24 to furnish information regarding tax shelters) is amended  
 25 to read as follows:

1 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**  
2 **ING REPORTABLE TRANSACTIONS.**

3 “(a) IN GENERAL.—If a person who is required to  
4 file a return under section 6111(a) with respect to any  
5 reportable transaction—

6 “(1) fails to file such return on or before the  
7 date prescribed therefor, or

8 “(2) files false or incomplete information with  
9 the Secretary with respect to such transaction,  
10 such person shall pay a penalty with respect to such return  
11 in the amount determined under subsection (b).

12 “(b) AMOUNT OF PENALTY.—

13 “(1) IN GENERAL.—Except as provided in para-  
14 graph (2), the penalty imposed under subsection (a)  
15 with respect to any failure shall be \$50,000.

16 “(2) LISTED TRANSACTIONS.—The penalty im-  
17 posed under subsection (a) with respect to any listed  
18 transaction shall be an amount equal to the greater  
19 of—

20 “(A) \$200,000, or

21 “(B) 50 percent of the gross income de-  
22 rived by such person with respect to aid, assist-  
23 ance, or advice which is provided with respect  
24 to the listed transaction before the date the re-  
25 turn including the transaction is filed under  
26 section 6111.

1 Subparagraph (B) shall be applied by substituting  
 2 ‘75 percent’ for ‘50 percent’ in the case of an inten-  
 3 tional failure or act described in subsection (a).

4 “(c) CERTAIN RULES TO APPLY.—The provisions of  
 5 section 6707A(d) shall apply to any penalty imposed under  
 6 this section.

7 “(d) REPORTABLE AND LISTED TRANSACTIONS.—  
 8 The terms ‘reportable transaction’ and ‘listed transaction’  
 9 have the respective meanings given to such terms by sec-  
 10 tion 6707A(c).”.

11 (b) CLERICAL AMENDMENT.—The item relating to  
 12 section 6707 in the table of sections for part I of sub-  
 13 chapter B of chapter 68 is amended by striking “tax shel-  
 14 ters” and inserting “reportable transactions”.

15 (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to returns the due date for which  
 17 is after the date of the enactment of this Act.

18 **SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO**  
 19 **MAINTAIN LISTS OF INVESTORS.**

20 (a) IN GENERAL.—Subsection (a) of section 6708 is  
 21 amended to read as follows:

22 “(a) IMPOSITION OF PENALTY.—

23 “(1) IN GENERAL.—If any person who is re-  
 24 quired to maintain a list under section 6112(a) fails  
 25 to make such list available upon written request to

1 the Secretary in accordance with section  
2 6112(b)(1)(A) within 20 business days after the  
3 date of the Secretary's request, such person shall  
4 pay a penalty of \$10,000 for each day of such fail-  
5 ure after such 20th day.

6 “(2) REASONABLE CAUSE EXCEPTION.—No  
7 penalty shall be imposed by paragraph (1) with re-  
8 spect to the failure on any day if such failure is due  
9 to reasonable cause.”.

10 (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to requests made after the date  
12 of the enactment of this Act.

13 **SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**  
14 **CONDUCT RELATED TO TAX SHELTERS AND**  
15 **REPORTABLE TRANSACTIONS.**

16 (a) IN GENERAL.—Section 7408 (relating to action  
17 to enjoin promoters of abusive tax shelters, etc.) is amend-  
18 ed by redesignating subsection (c) as subsection (d) and  
19 by striking subsections (a) and (b) and inserting the fol-  
20 lowing new subsections:

21 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-  
22 tion in the name of the United States to enjoin any person  
23 from further engaging in specified conduct may be com-  
24 menced at the request of the Secretary. Any action under  
25 this section shall be brought in the district court of the

1 United States for the district in which such person resides,  
2 has his principal place of business, or has engaged in spec-  
3 ified conduct. The court may exercise its jurisdiction over  
4 such action (as provided in section 7402(a)) separate and  
5 apart from any other action brought by the United States  
6 against such person.

7 “(b) ADJUDICATION AND DECREE.—In any action  
8 under subsection (a), if the court finds—

9 “(1) that the person has engaged in any speci-  
10 fied conduct, and

11 “(2) that injunctive relief is appropriate to pre-  
12 vent recurrence of such conduct,

13 the court may enjoin such person from engaging in such  
14 conduct or in any other activity subject to penalty under  
15 this title.

16 “(c) SPECIFIED CONDUCT.—For purposes of this  
17 section, the term ‘specified conduct’ means any action, or  
18 failure to take action, which is—

19 “(1) subject to penalty under section 6700,  
20 6701, 6707, or 6708, or

21 “(2) in violation of any requirement under reg-  
22 ulations issued under section 320 of title 31, United  
23 States Code.”.

24 (b) CONFORMING AMENDMENTS.—

1           (1) The heading for section 7408 is amended to  
2       read as follows:

3       **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**  
4                       **LATED TO TAX SHELTERS AND REPORTABLE**  
5                       **TRANSACTIONS.”.**

6           (2) The table of sections for subchapter A of  
7       chapter 67 is amended by striking the item relating  
8       to section 7408 and inserting the following new  
9       item:

          “Sec. 7408. Actions to enjoin specified conduct related to tax shelters and  
          reportable transactions.”.

10       (c) **EFFECTIVE DATE.**—The amendment made by  
11       this section shall take effect on the day after the date of  
12       the enactment of this Act.

13       **SEC. 411. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY**  
14                       **INCOME TAX RETURN PREPARER.**

15       (a) **STANDARDS CONFORMED TO TAXPAYER STAND-**  
16       **ARDS.**—Section 6694(a) (relating to understatements due  
17       to unrealistic positions) is amended—

18           (1) by striking “realistic possibility of being  
19           sustained on its merits” in paragraph (1) and in-  
20           serting “reasonable belief that the tax treatment in  
21           such position was more likely than not the proper  
22           treatment”,

1           (2) by striking “or was frivolous” in paragraph  
2           (3) and inserting “or there was no reasonable basis  
3           for the tax treatment of such position”, and

4           (3) by striking “UNREALISTIC” in the heading  
5           and inserting “IMPROPER”.

6           (b) AMOUNT OF PENALTY.—Section 6694 is amend-  
7           ed—

8           (1) by striking “\$250” in subsection (a) and in-  
9           serting “\$1,000”, and

10           (2) by striking “\$1,000” in subsection (b) and  
11           inserting “\$5,000”.

12           (c) EFFECTIVE DATE.—The amendments made by  
13           this section shall apply to documents prepared after the  
14           date of the enactment of this Act.

15   **SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN**  
16                           **FOREIGN FINANCIAL ACCOUNTS.**

17           (a) IN GENERAL.—Section 5321(a)(5) of title 31,  
18           United States Code, is amended to read as follows:

19                   “(5) FOREIGN FINANCIAL AGENCY TRANS-  
20           ACTION VIOLATION.—

21                           “(A) PENALTY AUTHORIZED.—The Sec-  
22           retary of the Treasury may impose a civil  
23           money penalty on any person who violates, or  
24           causes any violation of, any provision of section  
25           5314.

1 “(B) AMOUNT OF PENALTY.—

2 “(i) IN GENERAL.—Except as pro-  
3 vided in subparagraph (C), the amount of  
4 any civil penalty imposed under subpara-  
5 graph (A) shall not exceed \$10,000.

6 “(ii) REASONABLE CAUSE EXCEP-  
7 TION.—No penalty shall be imposed under  
8 subparagraph (A) with respect to any vio-  
9 lation if—

10 “(I) such violation was due to  
11 reasonable cause, and

12 “(II) the amount of the trans-  
13 action or the balance in the account  
14 at the time of the transaction was  
15 properly reported.

16 “(C) WILLFUL VIOLATIONS.—In the case  
17 of any person willfully violating, or willfully  
18 causing any violation of, any provision of sec-  
19 tion 5314—

20 “(i) the maximum penalty under sub-  
21 paragraph (B)(i) shall be increased to the  
22 greater of—

23 “(I) \$100,000, or



1 “(II) 50 percent of the amount  
 2 determined under subparagraph (D),  
 3 and  
 4 “(ii) subparagraph (B)(ii) shall not  
 5 apply.

6 “(D) AMOUNT.—The amount determined  
 7 under this subparagraph is—

8 “(i) in the case of a violation involving  
 9 a transaction, the amount of the trans-  
 10 action, or

11 “(ii) in the case of a violation involv-  
 12 ing a failure to report the existence of an  
 13 account or any identifying information re-  
 14 quired to be provided with respect to an  
 15 account, the balance in the account at the  
 16 time of the violation.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
 18 this section shall apply to violations occurring after the  
 19 date of the enactment of this Act.

20 **SEC. 413. FRIVOLOUS TAX SUBMISSIONS.**

21 (a) CIVIL PENALTIES.—Section 6702 is amended to  
 22 read as follows:

23 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

24 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-  
 25 TURNS.—A person shall pay a penalty of \$5,000 if—

1           “(1) such person files what purports to be a re-  
2       turn of a tax imposed by this title but which—

3           “(A) does not contain information on  
4       which the substantial correctness of the self-as-  
5       sessment may be judged, or

6           “(B) contains information that on its face  
7       indicates that the self-assessment is substan-  
8       tially incorrect; and

9           “(2) the conduct referred to in paragraph (1)—

10          “(A) is based on a position which the Sec-  
11       retary has identified as frivolous under sub-  
12       section (c), or

13          “(B) reflects a desire to delay or impede  
14       the administration of Federal tax laws.

15       “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS  
16       SUBMISSIONS.—

17          “(1) IMPOSITION OF PENALTY.—Except as pro-  
18       vided in paragraph (3), any person who submits a  
19       specified frivolous submission shall pay a penalty of  
20       \$5,000.

21          “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For  
22       purposes of this section—

23          “(A) SPECIFIED FRIVOLOUS SUBMIS-  
24       SION.—The term ‘specified frivolous submis-

1           sion’ means a specified submission if any por-  
2           tion of such submission—

3                   “(i) is based on a position which the  
4                   Secretary has identified as frivolous under  
5                   subsection (c), or

6                   “(ii) reflects a desire to delay or im-  
7                   pede the administration of Federal tax  
8                   laws.

9                   “(B) SPECIFIED SUBMISSION.—The term  
10           ‘specified submission’ means—

11                   “(i) a request for a hearing under—

12                           “(I) section 6320 (relating to no-  
13                           tice and opportunity for hearing upon  
14                           filing of notice of lien), or

15                           “(II) section 6330 (relating to  
16                           notice and opportunity for hearing be-  
17                           fore levy), and

18                   “(ii) an application under—

19                           “(I) section 6159 (relating to  
20                           agreements for payment of tax liabil-  
21                           ity in installments),

22                           “(II) section 7122 (relating to  
23                           compromises), or

24                           “(III) section 7811 (relating to  
25                           taxpayer assistance orders).

1           “(3) OPPORTUNITY TO WITHDRAW SUBMIS-  
2           SION.—If the Secretary provides a person with no-  
3           tice that a submission is a specified frivolous sub-  
4           mission and such person withdraws such submission  
5           within 30 days after such notice, the penalty im-  
6           posed under paragraph (1) shall not apply with re-  
7           spect to such submission.

8           “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-  
9           retary shall prescribe (and periodically revise) a list of po-  
10          sitions which the Secretary has identified as being frivo-  
11          lous for purposes of this subsection. The Secretary shall  
12          not include in such list any position that the Secretary  
13          determines meets the requirement of section  
14          6662(d)(2)(B)(ii)(II).

15          “(d) REDUCTION OF PENALTY.—The Secretary may  
16          reduce the amount of any penalty imposed under this sec-  
17          tion if the Secretary determines that such reduction would  
18          promote compliance with and administration of the Fed-  
19          eral tax laws.

20          “(e) PENALTIES IN ADDITION TO OTHER PEN-  
21          ALTIES.—The penalties imposed by this section shall be  
22          in addition to any other penalty provided by law.”.

23          (b) TREATMENT OF FRIVOLOUS REQUESTS FOR  
24          HEARINGS BEFORE LEVY.—

1           (1) FRIVOLOUS REQUESTS DISREGARDED.—

2           Section 6330 (relating to notice and opportunity for  
3           hearing before levy) is amended by adding at the  
4           end the following new subsection:

5           “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—

6           Notwithstanding any other provision of this section, if the  
7           Secretary determines that any portion of a request for a  
8           hearing under this section or section 6320 meets the re-  
9           quirement of clause (i) or (ii) of section 6702(b)(2)(A),  
10          then the Secretary may treat such portion as if it were  
11          never submitted and such portion shall not be subject to  
12          any further administrative or judicial review.”.

13          (2) PRECLUSION FROM RAISING FRIVOLOUS  
14          ISSUES AT HEARING.—Section 6330(c)(4) is amend-  
15          ed—

16                 (A) by striking “(A)” and inserting  
17                 “(A)(i)”;

18                 (B) by striking “(B)” and inserting “(ii)”;

19                 (C) by striking the period at the end of the  
20                 first sentence and inserting “; or”; and

21                 (D) by inserting after subparagraph (A)(ii)  
22                 (as so redesignated) the following:

23                         “(B) the issue meets the requirement of  
24                         clause (i) or (ii) of section 6702(b)(2)(A).”.

1           (3) STATEMENT OF GROUNDS.—Section  
 2       6330(b)(1) is amended by striking “under sub-  
 3       section (a)(3)(B)” and inserting “in writing under  
 4       subsection (a)(3)(B) and states the grounds for the  
 5       requested hearing”.

6       (c) TREATMENT OF FRIVOLOUS REQUESTS FOR  
 7       HEARINGS UPON FILING OF NOTICE OF LIEN.—Section  
 8       6320 is amended—

9           (1) in subsection (b)(1), by striking “under sub-  
 10      section (a)(3)(B)” and inserting “in writing under  
 11      subsection (a)(3)(B) and states the grounds for the  
 12      requested hearing”, and

13          (2) in subsection (c), by striking “and (e)” and  
 14      inserting “(e), and (g)”.

15      (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR  
 16      OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-  
 17      MENTS.—Section 7122 is amended by adding at the end  
 18      the following new subsection:

19      “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-  
 20      standing any other provision of this section, if the Sec-  
 21      retary determines that any portion of an application for  
 22      an offer-in-compromise or installment agreement sub-  
 23      mitted under this section or section 6159 meets the re-  
 24      quirement of clause (i) or (ii) of section 6702(b)(2)(A),  
 25      then the Secretary may treat such portion as if it were

1 never submitted and such portion shall not be subject to  
 2 any further administrative or judicial review.”.

3 (e) CLERICAL AMENDMENT.—The table of sections  
 4 for part I of subchapter B of chapter 68 is amended by  
 5 striking the item relating to section 6702 and inserting  
 6 the following new item:

“Sec. 6702. Frivolous tax submissions.”.

7 (f) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to submissions made and issues  
 9 raised after the date on which the Secretary first pre-  
 10 scribes a list under section 6702(c) of the Internal Rev-  
 11 enue Code of 1986, as amended by subsection (a).

12 **SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BE-**  
 13 **FORE THE DEPARTMENT OF TREASURY.**

14 (a) CENSURE; IMPOSITION OF PENALTY.—

15 (1) IN GENERAL.—Section 330(b) of title 31,  
 16 United States Code, is amended—

17 (A) by inserting “, or censure,” after “De-  
 18 partment”, and

19 (B) by adding at the end the following new  
 20 flush sentence:

21 “The Secretary may impose a monetary penalty on any  
 22 representative described in the preceding sentence. If the  
 23 representative was acting on behalf of an employer or any  
 24 firm or other entity in connection with the conduct giving  
 25 rise to such penalty, the Secretary may impose a monetary

1 penalty on such employer, firm, or entity if it knew, or  
 2 reasonably should have known, of such conduct. Such pen-  
 3 alty shall not exceed the gross income derived (or to be  
 4 derived) from the conduct giving rise to the penalty and  
 5 may be in addition to, or in lieu of, any suspension, disbar-  
 6 ment, or censure of the representative.”.

7           (2) EFFECTIVE DATE.—The amendments made  
 8       by this subsection shall apply to actions taken after  
 9       the date of the enactment of this Act.

10       (b) TAX SHELTER OPINIONS, ETC.—Section 330 of  
 11 such title 31 is amended by adding at the end the fol-  
 12 lowing new subsection:

13       “(d) Nothing in this section or in any other provision  
 14 of law shall be construed to limit the authority of the Sec-  
 15 retary of the Treasury to impose standards applicable to  
 16 the rendering of written advice with respect to any entity,  
 17 transaction plan or arrangement, or other plan or arrange-  
 18 ment, which is of a type which the Secretary determines  
 19 as having a potential for tax avoidance or evasion.”.

20 **SEC. 415. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**  
 21 **TERS.**

22       (a) PENALTY FOR PROMOTING ABUSIVE TAX SHEL-  
 23 TERS.—Section 6700 (relating to promoting abusive tax  
 24 shelters, etc.) is amended—



1           (1) by redesignating subsections (b) and (c) as  
2           subsections (d) and (e), respectively,

3           (2) by striking “a penalty” and all that follows  
4           through the period in the first sentence of subsection  
5           (a) and inserting “a penalty determined under sub-  
6           section (b)”, and

7           (3) by inserting after subsection (a) the fol-  
8           lowing new subsections:

9           “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-  
10          ALTY; LIABILITY FOR PENALTY.—

11           “(1) AMOUNT OF PENALTY.—The amount of  
12          the penalty imposed by subsection (a) shall not ex-  
13          ceed 100 percent of the gross income derived (or to  
14          be derived) from such activity by the person or per-  
15          sons subject to such penalty.

16           “(2) CALCULATION OF PENALTY.—The penalty  
17          amount determined under paragraph (1) shall be  
18          calculated with respect to each instance of an activ-  
19          ity described in subsection (a), each instance in  
20          which income was derived by the person or persons  
21          subject to such penalty, and each person who par-  
22          ticipated in such an activity.

23           “(3) LIABILITY FOR PENALTY.—If more than 1  
24          person is liable under subsection (a) with respect to  
25          such activity, all such persons shall be jointly and

1 severally liable for the penalty under such sub-  
 2 section.

3 “(c) PENALTY NOT DEDUCTIBLE.—The payment of  
 4 any penalty imposed under this section or the payment  
 5 of any amount to settle or avoid the imposition of such  
 6 penalty shall not be deductible by the person who is sub-  
 7 ject to such penalty or who makes such payment.”.

8 (b) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to activities after the date of the  
 10 enactment of this Act.

11 **SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**  
 12 **FOR WHICH REQUIRED LISTED TRANS-**  
 13 **ACTIONS NOT REPORTED.**

14 (a) IN GENERAL.—Section 6501(c) (relating to ex-  
 15 ceptions) is amended by adding at the end the following  
 16 new paragraph:

17 “(10) LISTED TRANSACTIONS.—If a taxpayer  
 18 fails to include on any return or statement for any  
 19 taxable year any information with respect to a listed  
 20 transaction (as defined in section 6707A(c)(2))  
 21 which is required under section 6011 to be included  
 22 with such return or statement, the time for assess-  
 23 ment of any tax imposed by this title with respect  
 24 to such transaction shall not expire before the date  
 25 which is 1 year after the earlier of—

1           “(A) the date on which the Secretary is  
2           furnished the information so required; or

3           “(B) the date that a material advisor (as  
4           defined in section 6111) meets the requirements  
5           of section 6112 with respect to a request by the  
6           Secretary under section 6112(b) relating to  
7           such transaction with respect to such tax-  
8           payer.”.

9           (b) **EFFECTIVE DATE.**—The amendment made by  
10          this section shall apply to taxable years with respect to  
11          which the period for assessing a deficiency did not expire  
12          before the date of the enactment of this Act.

13       **SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UN-**  
14                       **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**  
15                       **CLOSED REPORTABLE AND NONECONOMIC**  
16                       **SUBSTANCE TRANSACTIONS.**

17          (a) **IN GENERAL.**—Section 163 (relating to deduction  
18          for interest) is amended by redesignating subsection (m)  
19          as subsection (n) and by inserting after subsection (l) the  
20          following new subsection:

21          “(m) **INTEREST ON UNPAID TAXES ATTRIBUTABLE**  
22          **TO NONDISCLOSED REPORTABLE TRANSACTIONS AND**  
23          **NONECONOMIC SUBSTANCE TRANSACTIONS.**—No deduc-  
24          tion shall be allowed under this chapter for any interest

1 paid or accrued under section 6601 on any underpayment  
2 of tax which is attributable to—

3 “(1) the portion of any reportable transaction  
4 understatement (as defined in section 6662A(b))  
5 with respect to which the requirement of section  
6 6664(d)(2)(A) is not met, or

7 “(2) any noneconomic substance transaction  
8 understatement (as defined in section 6662B(c)).”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to transactions in taxable years  
11 beginning after the date of the enactment of this Act.

12 **SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX**  
13 **LAW ENFORCEMENT.**

14 There is authorized to be appropriated \$300,000,000  
15 for each fiscal year beginning after September 30, 2003,  
16 for the purpose of carrying out tax law enforcement to  
17 combat tax avoidance transactions and other tax shelters,  
18 including the use of offshore financial accounts to conceal  
19 taxable income.

20 **SEC. 419. PENALTY FOR AIDING AND ABETTING THE UN-**  
21 **DERSTATEMENT OF TAX LIABILITY.**

22 (a) IN GENERAL.—Section 6701(a) (relating to im-  
23 position of penalty) is amended—

24 (1) by inserting “the tax liability or” after “re-  
25 spect to,” in paragraph (1),

1           (2) by inserting “aid, assistance, procurement,  
2           or advice with respect to such” before “portion”  
3           both places it appears in paragraphs (2) and (3),  
4           and

5           (3) by inserting “instance of aid, assistance,  
6           procurement, or advice or each such” before “docu-  
7           ment” in the matter following paragraph (3).

8           (b) AMOUNT OF PENALTY.—Subsection (b) of section  
9   6701 (relating to penalties for aiding and abetting under-  
10 statement of tax liability) is amended to read as follows:

11       “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-  
12 ALTY; LIABILITY FOR PENALTY.—

13           “(1) AMOUNT OF PENALTY.—The amount of  
14       the penalty imposed by subsection (a) shall not ex-  
15       ceed 100 percent of the gross income derived (or to  
16       be derived) from such aid, assistance, procurement,  
17       or advice provided by the person or persons subject  
18       to such penalty.

19           “(2) CALCULATION OF PENALTY.—The penalty  
20       amount determined under paragraph (1) shall be  
21       calculated with respect to each instance of aid, as-  
22       sistance, procurement, or advice described in sub-  
23       section (a), each instance in which income was de-  
24       rived by the person or persons subject to such pen-

1 alty, and each person who made such an understate-  
 2 ment of the liability for tax.

3 “(3) LIABILITY FOR PENALTY.—If more than 1  
 4 person is liable under subsection (a) with respect to  
 5 providing such aid, assistance, procurement, or ad-  
 6 vice, all such persons shall be jointly and severally  
 7 liable for the penalty under such subsection.”.

8 (c) PENALTY NOT DEDUCTIBLE.—Section 6701 is  
 9 amended by adding at the end the following new sub-  
 10 section:

11 “(g) PENALTY NOT DEDUCTIBLE.—The payment of  
 12 any penalty imposed under this section or the payment  
 13 of any amount to settle or avoid the imposition of such  
 14 penalty shall not be deductible by the person who is sub-  
 15 ject to such penalty or who makes such payment.”.

16 (d) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to activities after the date of the  
 18 enactment of this Act.

19 **SEC. 420. STUDY ON INFORMATION SHARING AMONG LAW**  
 20 **ENFORCEMENT AGENCIES.**

21 (a) STUDY.—The Secretary of the Treasury shall,  
 22 jointly with the Attorney General, the Securities and Ex-  
 23 change Commission, and the Commissioner of Internal  
 24 Revenue, study the effectiveness of, and ways to improve,  
 25 the sharing of information related to the promotion of pro-

1 hibited tax shelters or tax avoidance schemes and other  
 2 potential violations of Federal laws.

3 (b) REPORT.—The Secretary shall, not later than 1  
 4 year after the date of the enactment of this Act, report  
 5 to the appropriate committees of the Congress the results  
 6 of the study under subsection (a), including any rec-  
 7 ommendations for legislation.

## 8 **Subtitle B—Other Corporate** 9 **Governance Provisions**

### 10 **SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGU-** 11 **LATION AUTHORITY.**

12 (a) IN GENERAL.—Section 1502 (relating to consoli-  
 13 dated return regulations) is amended by adding at the end  
 14 the following new sentence: “In prescribing such regula-  
 15 tions, the Secretary may prescribe rules applicable to cor-  
 16 porations filing consolidated returns under section 1501  
 17 that are different from other provisions of this title that  
 18 would apply if such corporations filed separate returns.”.

19 (b) RESULT NOT OVERTURNED.—Notwithstanding  
 20 subsection (a), the Internal Revenue Code of 1986 shall  
 21 be construed by treating Treasury regulation § 1.1502–  
 22 20(c)(1)(iii) (as in effect on January 1, 2001) as being  
 23 inapplicable to the type of factual situation in 255 F.3d  
 24 1357 (Fed. Cir. 2001).

1 (c) EFFECTIVE DATE.—The provisions of this section  
2 shall apply to taxable years beginning before, on, or after  
3 the date of the enactment of this Act.

4 **SEC. 422. DECLARATION BY CHIEF EXECUTIVE OFFICER**  
5 **RELATING TO FEDERAL ANNUAL INCOME**  
6 **TAX RETURN OF A CORPORATION.**

7 (a) IN GENERAL.—The Federal annual tax return of  
8 a corporation with respect to income shall also include a  
9 declaration signed by the chief executive officer of such  
10 corporation (or other such officer of the corporation as  
11 the Secretary of the Treasury may designate if the cor-  
12 poration does not have a chief executive officer), under  
13 penalties of perjury, that the corporation has in place  
14 processes and procedures to ensure that such return com-  
15 plies with the Internal Revenue Code of 1986 and that  
16 the chief executive officer was provided reasonable assur-  
17 ance of the accuracy of all material aspects of such return.  
18 The preceding sentence shall not apply to any return of  
19 a regulated investment company (within the meaning of  
20 section 851 of such Code).

21 (b) EFFECTIVE DATE.—This section shall apply to  
22 the Federal annual tax return of a corporation with re-  
23 spect to income for taxable years ending after the date  
24 of the enactment of this Act.



1 **SEC. 423. DENIAL OF DEDUCTION FOR CERTAIN FINES,**  
2 **PENALTIES, AND OTHER AMOUNTS.**

3 (a) IN GENERAL.—Subsection (f) of section 162 (re-  
4 lating to trade or business expenses) is amended to read  
5 as follows:

6 “(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

7 “(1) IN GENERAL.—Except as provided in para-  
8 graph (2), no deduction otherwise allowable shall be  
9 allowed under this chapter for any amount paid or  
10 incurred (whether by suit, agreement, or otherwise)  
11 to, or at the direction of, a government or entity de-  
12 scribed in paragraph (4) in relation to the violation  
13 of any law or the investigation or inquiry by such  
14 government or entity into the potential violation of  
15 any law.

16 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING  
17 RESTITUTION.—Paragraph (1) shall not apply to  
18 any amount which the taxpayer establishes con-  
19 stitutes restitution (including remediation of prop-  
20 erty) for damage or harm caused by or which may  
21 be caused by the violation of any law or the potential  
22 violation of any law. This paragraph shall not apply  
23 to any amount paid or incurred as reimbursement to  
24 the government or entity for the costs of any inves-  
25 tigation or litigation.

1           “(3) EXCEPTION FOR AMOUNTS PAID OR IN-  
2           CURRED AS THE RESULT OF CERTAIN COURT OR-  
3           DERS.—Paragraph (1) shall not apply to any  
4           amount paid or incurred by order of a court in a  
5           suit in which no government or entity described in  
6           paragraph (4) is a party.

7           “(4) CERTAIN NONGOVERNMENTAL REGU-  
8           LATORY ENTITIES.—An entity is described in this  
9           paragraph if it is—

10           “(A) a nongovernmental entity which exer-  
11           cises self-regulatory powers (including imposing  
12           sanctions) in connection with a qualified board  
13           or exchange (as defined in section 1256(g)(7)),  
14           or

15           “(B) to the extent provided in regulations,  
16           a nongovernmental entity which exercises self-  
17           regulatory powers (including imposing sanc-  
18           tions) as part of performing an essential gov-  
19           ernmental function.

20           “(5) EXCEPTION FOR TAXES DUE.—Paragraph  
21           (1) shall not apply to any amount paid or incurred  
22           as taxes due.”.

23           (b) EFFECTIVE DATE.—The amendment made by  
24           this section shall apply to amounts paid or incurred after  
25           April 27, 2003, except that such amendment shall not

1 apply to amounts paid or incurred under any binding  
 2 order or agreement entered into on or before April 27,  
 3 2003. Such exception shall not apply to an order or agree-  
 4 ment requiring court approval unless the approval was ob-  
 5 tained on or before April 27, 2003.

6 **SEC. 424. DISALLOWANCE OF DEDUCTION FOR PUNITIVE**  
 7 **DAMAGES.**

8 (a) DISALLOWANCE OF DEDUCTION.—

9 (1) IN GENERAL.—Section 162(g) (relating to  
 10 treble damage payments under the antitrust laws) is  
 11 amended—

12 (A) by redesignating paragraphs (1) and  
 13 (2) as subparagraphs (A) and (B), respectively,  
 14 (B) by striking “If” and inserting:

15 “(1) TREBLE DAMAGES.—If”, and

16 (C) by adding at the end the following new  
 17 paragraph:

18 “(2) PUNITIVE DAMAGES.—No deduction shall  
 19 be allowed under this chapter for any amount paid  
 20 or incurred for punitive damages in connection with  
 21 any judgment in, or settlement of, any action. This  
 22 paragraph shall not apply to punitive damages de-  
 23 scribed in section 104(c).”.

1           (2) CONFORMING AMENDMENT.—The heading  
2           for section 162(g) is amended by inserting “OR PU-  
3           NITIVE DAMAGES” after “LAWS”.

4           (b) INCLUSION IN INCOME OF PUNITIVE DAMAGES  
5 PAID BY INSURER OR OTHERWISE.—

6           (1) IN GENERAL.—Part II of subchapter B of  
7           chapter 1 (relating to items specifically included in  
8           gross income) is amended by adding at the end the  
9           following new section:

10       **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**  
11                               **ANCE OR OTHERWISE.**

12       “Gross income shall include any amount paid to or  
13 on behalf of a taxpayer as insurance or otherwise by rea-  
14 son of the taxpayer’s liability (or agreement) to pay puni-  
15 tive damages.”.

16           (2) REPORTING REQUIREMENTS.—Section 6041  
17           (relating to information at source) is amended by  
18           adding at the end the following new subsection:

19       “(f) SECTION TO APPLY TO PUNITIVE DAMAGES  
20 COMPENSATION.—This section shall apply to payments by  
21 a person to or on behalf of another person as insurance  
22 or otherwise by reason of the other person’s liability (or  
23 agreement) to pay punitive damages.”.

24           (3) CONFORMING AMENDMENT.—The table of  
25           sections for part II of subchapter B of chapter 1 is

1       amended by adding at the end the following new  
2       item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

3       (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to damages paid or incurred on  
5 or after the date of the enactment of this Act.

6 **SEC. 425. INCREASE IN CRIMINAL MONETARY PENALTY**  
7 **LIMITATION FOR THE UNDERPAYMENT OR**  
8 **OVERPAYMENT OF TAX DUE TO FRAUD.**

9       (a) IN GENERAL.—Section 7206 (relating to fraud  
10 and false statements) is amended—

11           (1) by striking “Any person who—” and insert-  
12       ing “(a) IN GENERAL.—Any person who—”, and

13           (2) by adding at the end the following new sub-  
14       section:

15       “(b) INCREASE IN MONETARY LIMITATION FOR UN-  
16 DERPAYMENT OR OVERPAYMENT OF TAX DUE TO  
17 FRAUD.—If any portion of any underpayment (as defined  
18 in section 6664(a)) or overpayment (as defined in section  
19 6401(a)) of tax required to be shown on a return is attrib-  
20 utable to fraudulent action described in subsection (a), the  
21 applicable dollar amount under subsection (a) shall in no  
22 event be less than an amount equal to such portion. A  
23 rule similar to the rule under section 6663(b) shall apply  
24 for purposes of determining the portion so attributable.”.

25       (b) INCREASE IN PENALTIES.—

1 (1) ATTEMPT TO EVADE OR DEFEAT TAX.—

2 Section 7201 is amended—

3 (A) by striking “\$100,000” and inserting  
4 “\$250,000”,

5 (B) by striking “\$500,000” and inserting  
6 “\$1,000,000”, and

7 (C) by striking “5 years” and inserting  
8 “10 years”.

9 (2) WILLFUL FAILURE TO FILE RETURN, SUP-  
10 PLY INFORMATION, OR PAY TAX.—Section 7203 is  
11 amended—

12 (A) in the first sentence—

13 (i) by striking “misdemeanor” and in-  
14 serting “felony”, and

15 (ii) by striking “1 year” and inserting  
16 “10 years”, and

17 (B) by striking the third sentence.

18 (3) FRAUD AND FALSE STATEMENTS.—Section  
19 7206(a) (as redesignated by subsection (a)) is  
20 amended—

21 (A) by striking “\$100,000” and inserting  
22 “\$250,000”,

23 (B) by striking “\$500,000” and inserting  
24 “\$1,000,000”, and

1 (C) by striking “3 years” and inserting “5  
2 years”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to underpayments and overpay-  
5 ments attributable to actions occurring after the date of  
6 the enactment of this Act.

## 7 **Subtitle C—Enron-Related Tax** 8 **Shelter Provisions**

### 9 **SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF** 10 **BUILT-IN LOSSES.**

11 (a) IN GENERAL.—Section 362 (relating to basis to  
12 corporations) is amended by adding at the end the fol-  
13 lowing new subsection:

14 “(e) LIMITATIONS ON BUILT-IN LOSSES.—

15 “(1) LIMITATION ON IMPORTATION OF BUILT-  
16 IN LOSSES.—

17 “(A) IN GENERAL.—If in any transaction  
18 described in subsection (a) or (b) there would  
19 (but for this subsection) be an importation of a  
20 net built-in loss, the basis of each property de-  
21 scribed in subparagraph (B) which is acquired  
22 in such transaction shall (notwithstanding sub-  
23 sections (a) and (b)) be its fair market value  
24 immediately after such transaction.

1           “(B) PROPERTY DESCRIBED.—For pur-  
2 poses of subparagraph (A), property is de-  
3 scribed in this subparagraph if—

4           “(i) gain or loss with respect to such  
5 property is not subject to tax under this  
6 subtitle in the hands of the transferor im-  
7 mediately before the transfer, and

8           “(ii) gain or loss with respect to such  
9 property is subject to such tax in the  
10 hands of the transferee immediately after  
11 such transfer.

12           In any case in which the transferor is a part-  
13 nership, the preceding sentence shall be applied  
14 by treating each partner in such partnership as  
15 holding such partner’s proportionate share of  
16 the property of such partnership.

17           “(C) IMPORTATION OF NET BUILT-IN  
18 LOSS.—For purposes of subparagraph (A),  
19 there is an importation of a net built-in loss in  
20 a transaction if the transferee’s aggregate ad-  
21 justed bases of property described in subpara-  
22 graph (B) which is transferred in such trans-  
23 action would (but for this paragraph) exceed  
24 the fair market value of such property imme-  
25 diately after such transaction.



1           “(2) LIMITATION ON TRANSFER OF BUILT-IN  
2       LOSSES IN SECTION 351 TRANSACTIONS.—

3           “(A) IN GENERAL.—If—

4               “(i) property is transferred by a  
5               transferor in any transaction which is de-  
6               scribed in subsection (a) and which is not  
7               described in paragraph (1) of this sub-  
8               section, and

9               “(ii) the transferee’s aggregate ad-  
10              justed bases of such property so trans-  
11              ferred would (but for this paragraph) ex-  
12              ceed the fair market value of such property  
13              immediately after such transaction,

14           then, notwithstanding subsection (a), the trans-  
15           feree’s aggregate adjusted bases of the property  
16           so transferred shall not exceed the fair market  
17           value of such property immediately after such  
18           transaction.

19           “(B) ALLOCATION OF BASIS REDUC-  
20           TION.—The aggregate reduction in basis by  
21           reason of subparagraph (A) shall be allocated  
22           among the property so transferred in proportion  
23           to their respective built-in losses immediately  
24           before the transaction.

1           “(C) EXCEPTION FOR TRANSFERS WITHIN  
2           AFFILIATED GROUP.—Subparagraph (A) shall  
3           not apply to any transaction if the transferor  
4           owns stock in the transferee meeting the re-  
5           quirements of section 1504(a)(2). In the case of  
6           property to which subparagraph (A) does not  
7           apply by reason of the preceding sentence, the  
8           transferor’s basis in the stock received for such  
9           property shall not exceed its fair market value  
10          immediately after the transfer.”.

11          (b) COMPARABLE TREATMENT WHERE LIQUIDA-  
12          TION.—Paragraph (1) of section 334(b) (relating to liq-  
13          uidation of subsidiary) is amended to read as follows:

14               “(1) IN GENERAL.—If property is received by a  
15          corporate distributee in a distribution in a complete  
16          liquidation to which section 332 applies (or in a  
17          transfer described in section 337(b)(1)), the basis of  
18          such property in the hands of such distributee shall  
19          be the same as it would be in the hands of the trans-  
20          feror; except that the basis of such property in the  
21          hands of such distributee shall be the fair market  
22          value of the property at the time of the distribu-  
23          tion—

1           “(A) in any case in which gain or loss is  
2           recognized by the liquidating corporation with  
3           respect to such property, or

4           “(B) in any case in which the liquidating  
5           corporation is a foreign corporation, the cor-  
6           porate distributee is a domestic corporation,  
7           and the corporate distributee’s aggregate ad-  
8           justed bases of property described in section  
9           362(e)(1)(B) which is distributed in such liq-  
10          uidation would (but for this subparagraph) ex-  
11          ceed the fair market value of such property im-  
12          mediately after such liquidation.”.

13       (c) EFFECTIVE DATES.—

14           (1) IN GENERAL.—The amendment made by  
15           subsection (a) shall apply to transactions after De-  
16           cember 31, 2003.

17           (2) LIQUIDATIONS.—The amendment made by  
18           subsection (b) shall apply to liquidations after De-  
19           cember 31, 2003.

20       **SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN**  
21                       **STOCK HELD BY PARTNERSHIP IN COR-**  
22                       **PORATE PARTNER.**

23           (a) IN GENERAL.—Section 755 is amended by adding  
24           at the end the following new subsection:

1       “(c) NO ALLOCATION OF BASIS DECREASE TO  
 2 STOCK OF CORPORATE PARTNER.—In making an alloca-  
 3 tion under subsection (a) of any decrease in the adjusted  
 4 basis of partnership property under section 734(b)—

5               “(1) no allocation may be made to stock in a  
 6 corporation (or any person which is related (within  
 7 the meaning of section 267(b) or 707(b)(1)) to such  
 8 corporation) which is a partner in the partnership,  
 9 and

10              “(2) any amount not allocable to stock by rea-  
 11 son of paragraph (1) shall be allocated under sub-  
 12 section (a) to other partnership property in such  
 13 manner as the Secretary may prescribe.

14 Gain shall be recognized to the partnership to the extent  
 15 that the amount required to be allocated under paragraph  
 16 (2) to other partnership property exceeds the aggregate  
 17 adjusted basis of such other property immediately before  
 18 the allocation required by paragraph (2).”.

19       (b) EFFECTIVE DATE.—The amendment made by  
 20 this section shall apply to distributions after February 13,  
 21 2003.

22 **SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.**

23       (a) IN GENERAL.—Part V of subchapter M of chap-  
 24 ter 1 (relating to financial asset securitization investment  
 25 trusts) is hereby repealed.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (6) of section 56(g) is amended  
3 by striking “REMIC, or FASIT” and inserting “or  
4 REMIC”.

5 (2) Clause (ii) of section 382(l)(4)(B) is amend-  
6 ed by striking “a REMIC to which part IV of sub-  
7 chapter M applies, or a FASIT to which part V of  
8 subchapter M applies,” and inserting “or a REMIC  
9 to which part IV of subchapter M applies,”.

10 (3) Paragraph (1) of section 582(c) is amended  
11 by striking “, and any regular interest in a  
12 FASIT,”.

13 (4) Subparagraph (E) of section 856(c)(5) is  
14 amended by striking the last sentence.

15 (5)(A) Section 860G(a)(1) is amended by add-  
16 ing at the end the following new sentence: “An inter-  
17 est shall not fail to qualify as a regular interest sole-  
18 ly because the specified principal amount of the reg-  
19 ular interest (or the amount of interest accrued on  
20 the regular interest) can be reduced as a result of  
21 the nonoccurrence of 1 or more contingent payments  
22 with respect to any reverse mortgage loan held by  
23 the REMIC if, on the startup day for the REMIC,  
24 the sponsor reasonably believes that all principal and

1 interest due under the regular interest will be paid  
2 at or prior to the liquidation of the REMIC.”.

3 (B) The last sentence of section 860G(a)(3) is  
4 amended by inserting “, and any reverse mortgage  
5 loan (and each balance increase on such loan meet-  
6 ing the requirements of subparagraph (A)(iii)) shall  
7 be treated as an obligation secured by an interest in  
8 real property” before the period at the end.

9 (6) Paragraph (3) of section 860G(a) is amend-  
10 ed by adding “and” at the end of subparagraph (B),  
11 by striking “, and” at the end of subparagraph (C)  
12 and inserting a period, and by striking subparagraph  
13 (D).

14 (7) Section 860G(a)(3), as amended by para-  
15 graph (6), is amended by adding at the end the fol-  
16 lowing new sentence: “For purposes of subparagraph  
17 (A), if more than 50 percent of the obligations  
18 transferred to, or purchased by, the REMIC are  
19 originated by the United States or any State (or any  
20 political subdivision, agency, or instrumentality of  
21 the United States or any State) and are principally  
22 secured by an interest in real property, then each  
23 obligation transferred to, or purchased by, the  
24 REMIC shall be treated as secured by an interest in  
25 real property.”.

1           (8)(A) Section 860G(a)(3)(A) is amended by  
2           striking “or” at the end of clause (i), by inserting  
3           “or” at the end of clause (ii), and by inserting after  
4           clause (ii) the following new clause:

5                   “(iii) represents an increase in the  
6                   principal amount under the original terms  
7                   of an obligation described in clause (i) or  
8                   (ii) if such increase—

9                           “(I) is attributable to an advance  
10                           made to the obligor pursuant to the  
11                           original terms of the obligation,

12                           “(II) occurs after the startup  
13                           day, and

14                           “(III) is purchased by the  
15                           REMIC pursuant to a fixed price con-  
16                           tract in effect on the startup day.”.

17           (B) Section 860G(a)(7)(B) is amended to read  
18           as follows:

19                   “(B) QUALIFIED RESERVE FUND.—For  
20                   purposes of subparagraph (A), the term ‘quali-  
21                   fied reserve fund’ means any reasonably re-  
22                   quired reserve to—

23                           “(i) provide for full payment of ex-  
24                           penses of the REMIC or amounts due on  
25                           regular interests in the event of defaults on

1 qualified mortgages or lower than expected  
2 returns on cash flow investments, or

3 “(ii) provide a source of funds for the  
4 purchase of obligations described in clause  
5 (ii) or (iii) of paragraph (3)(A).

6 The aggregate fair market value of the assets  
7 held in any such reserve shall not exceed 50  
8 percent of the aggregate fair market value of all  
9 of the assets of the REMIC on the startup day,  
10 and the amount of any such reserve shall be  
11 promptly and appropriately reduced to the ex-  
12 tent the amount held in such reserve is no  
13 longer reasonably required for purposes speci-  
14 fied in clause (i) or (ii) of this subparagraph.”.

15 (9) Subparagraph (C) of section 1202(e)(4) is  
16 amended by striking “REMIC, or FASIT” and in-  
17 serting “or REMIC”.

18 (10) Clause (xi) of section 7701(a)(19)(C) is  
19 amended—

20 (A) by striking “and any regular interest  
21 in a FASIT,”, and

22 (B) by striking “or FASIT” each place it  
23 appears.

24 (11) Subparagraph (A) of section 7701(i)(2) is  
25 amended by striking “or a FASIT”.



1           (12) The table of parts for subchapter M of  
2       chapter 1 is amended by striking the item relating  
3       to part V.

4       (c) EFFECTIVE DATE.—

5           (1) IN GENERAL.—Except as provided in para-  
6       graph (2), the amendments made by this section  
7       shall take effect on February 14, 2003.

8           (2) EXCEPTION FOR EXISTING FASITS.—Para-  
9       graph (1) shall not apply to any FASIT in existence  
10      on the date of the enactment of this Act to the ex-  
11      tent that regular interests issued by the FASIT be-  
12      fore such date continue to remain outstanding in ac-  
13      cordance with the original terms of issuance.

14   **SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR**  
15                           **INTEREST ON CONVERTIBLE DEBT.**

16       (a) IN GENERAL.—Paragraph (2) of section 163(l)  
17      is amended by inserting “or equity held by the issuer (or  
18      any related party) in any other person” after “or a related  
19      party”.

20       (b) CAPITALIZATION ALLOWED WITH RESPECT TO  
21      EQUITY OF PERSONS OTHER THAN ISSUER AND RE-  
22      LATED PARTIES.—Section 163(l) is amended by redesign-  
23      ating paragraphs (4) and (5) as paragraphs (5) and (6)  
24      and by inserting after paragraph (3) the following new  
25      paragraph:

1           “(4) CAPITALIZATION ALLOWED WITH RESPECT  
2           TO EQUITY OF PERSONS OTHER THAN ISSUER AND  
3           RELATED PARTIES.—If the disqualified debt instru-  
4           ment of a corporation is payable in equity held by  
5           the issuer (or any related party) in any other person  
6           (other than a related party), the basis of such equity  
7           shall be increased by the amount not allowed as a  
8           deduction by reason of paragraph (1) with respect to  
9           the instrument.”.

10          (c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED  
11 BY DEALERS IN SECURITIES.—Section 163(l), as amend-  
12 ed by subsection (b), is amended by redesignating para-  
13 graphs (5) and (6) as paragraphs (6) and (7) and by in-  
14 serting after paragraph (4) the following new paragraph:

15           “(5) EXCEPTION FOR CERTAIN INSTRUMENTS  
16           ISSUED BY DEALERS IN SECURITIES.—For purposes  
17           of this subsection, the term ‘disqualified debt instru-  
18           ment’ does not include indebtedness issued by a  
19           dealer in securities (or a related party) which is pay-  
20           able in, or by reference to, equity (other than equity  
21           of the issuer or a related party) held by such dealer  
22           in its capacity as a dealer in securities. For purposes  
23           of this paragraph, the term ‘dealer in securities’ has  
24           the meaning given such term by section 475.”.

1 (d) CONFORMING AMENDMENTS.—Paragraph (3) of  
 2 section 163(l) is amended—

3 (1) by striking “or a related party” in the ma-  
 4 terial preceding subparagraph (A) and inserting “or  
 5 any other person”, and

6 (2) by striking “or interest” each place it ap-  
 7 pears.

8 (e) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to debt instruments issued after  
 10 February 13, 2003.

11 **SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**  
 12 **FITS UNDER SECTION 269.**

13 (a) IN GENERAL.—Subsection (a) of section 269 (re-  
 14 lating to acquisitions made to evade or avoid income tax)  
 15 is amended to read as follows:

16 “(a) IN GENERAL.—If—

17 “(1)(A) any person or persons acquire, directly  
 18 or indirectly, control of a corporation, or

19 “(B) any corporation acquires, directly or indi-  
 20 rectly, property of another corporation and the basis  
 21 of such property, in the hands of the acquiring cor-  
 22 poration, is determined by reference to the basis in  
 23 the hands of the transferor corporation, and

1           “(2) the principal purpose for which such acqui-  
 2           sition was made is evasion or avoidance of Federal  
 3           income tax,  
 4           then the Secretary may disallow such deduction, credit,  
 5           or other allowance. For purposes of paragraph (1)(A),  
 6           control means the ownership of stock possessing at least  
 7           50 percent of the total combined voting power of all class-  
 8           es of stock entitled to vote or at least 50 percent of the  
 9           total value of all shares of all classes of stock of the cor-  
 10          poration.”.

11          (b) EFFECTIVE DATE.—The amendment made by  
 12          this section shall apply to stock and property acquired  
 13          after February 13, 2003.

14      **SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUB-**  
 15                           **PART F AND PASSIVE FOREIGN INVESTMENT**  
 16                           **COMPANY RULES.**

17          (a) LIMITATION ON EXCEPTION FROM PFIC RULES  
 18          FOR UNITED STATES SHAREHOLDERS OF CONTROLLED  
 19          FOREIGN CORPORATIONS.—Paragraph (2) of section  
 20          1297(e) (relating to passive foreign investment company)  
 21          is amended by adding at the end the following flush sen-  
 22          tence:

23                   “Such term shall not include any period if the  
 24                   earning of subpart F income by such corpora-  
 25                   tion during such period would result in only a

1 remote likelihood of an inclusion in gross in-  
 2 come under section 951(a)(1)(A)(i).”.

3 (b) **EFFECTIVE DATE.**—The amendment made by  
 4 this section shall apply to taxable years of controlled for-  
 5 eign corporations beginning after February 13, 2003, and  
 6 to taxable years of United States shareholders with or  
 7 within which such taxable years of controlled foreign cor-  
 8 porations end.

## 9 **Subtitle D—Provisions to** 10 **Discourage Expatriation**

### 11 **SEC. 441. TAX TREATMENT OF INVERTED CORPORATE EN-** 12 **TITIES.**

13 (a) **IN GENERAL.**—Subchapter C of chapter 80 (re-  
 14 lating to provisions affecting more than one subtitle) is  
 15 amended by adding at the end the following new section:

#### 16 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE** 17 **ENTITIES.**

18 **“(a) INVERTED CORPORATIONS TREATED AS DOMES-**  
 19 **TIC CORPORATIONS.**—

20 **“(1) IN GENERAL.**—If a foreign incorporated  
 21 entity is treated as an inverted domestic corporation,  
 22 then, notwithstanding section 7701(a)(4), such enti-  
 23 ty shall be treated for purposes of this title as a do-  
 24 mestic corporation.

1           “(2) INVERTED DOMESTIC CORPORATION.—For  
2           purposes of this section, a foreign incorporated enti-  
3           ty shall be treated as an inverted domestic corpora-  
4           tion if, pursuant to a plan (or a series of related  
5           transactions)—

6                   “(A) the entity completes after March 20,  
7                   2002, the direct or indirect acquisition of sub-  
8                   stantially all of the properties held directly or  
9                   indirectly by a domestic corporation or substan-  
10                  tially all of the properties constituting a trade  
11                  or business of a domestic partnership,

12                  “(B) after the acquisition at least 80 per-  
13                  cent of the stock (by vote or value) of the entity  
14                  is held—

15                   “(i) in the case of an acquisition with  
16                   respect to a domestic corporation, by  
17                   former shareholders of the domestic cor-  
18                   poration by reason of holding stock in the  
19                   domestic corporation, or

20                   “(ii) in the case of an acquisition with  
21                   respect to a domestic partnership, by  
22                   former partners of the domestic partner-  
23                   ship by reason of holding a capital or prof-  
24                   its interest in the domestic partnership,  
25                   and

1           “(C) the expanded affiliated group which  
2           after the acquisition includes the entity does  
3           not have substantial business activities in the  
4           foreign country in which or under the law of  
5           which the entity is created or organized when  
6           compared to the total business activities of such  
7           expanded affiliated group.

8           Except as provided in regulations, an acquisition of  
9           properties of a domestic corporation shall not be  
10          treated as described in subparagraph (A) if none of  
11          the corporation’s stock was readily tradeable on an  
12          established securities market at any time during the  
13          4-year period ending on the date of the acquisition.

14          “(b) PRESERVATION OF DOMESTIC TAX BASE IN  
15          CERTAIN INVERSION TRANSACTIONS TO WHICH SUB-  
16          SECTION (a) DOES NOT APPLY.—

17               “(1) IN GENERAL.—If a foreign incorporated  
18               entity would be treated as an inverted domestic cor-  
19               poration with respect to an acquired entity if ei-  
20               ther—

21                       “(A) subsection (a)(2)(A) were applied by  
22                       substituting ‘after December 31, 1996, and on  
23                       or before March 20, 2002’ for ‘after March 20,  
24                       2002’ and subsection (a)(2)(B) were applied by

1 substituting ‘more than 50 percent’ for ‘at least  
2 80 percent’, or

3 “(B) subsection (a)(2)(B) were applied by  
4 substituting ‘more than 50 percent’ for ‘at least  
5 80 percent’,

6 then the rules of subsection (c) shall apply to any  
7 inversion gain of the acquired entity during the ap-  
8 plicable period and the rules of subsection (d) shall  
9 apply to any related party transaction of the ac-  
10 quired entity during the applicable period. This sub-  
11 section shall not apply for any taxable year if sub-  
12 section (a) applies to such foreign incorporated enti-  
13 ty for such taxable year.

14 “(2) ACQUIRED ENTITY.—For purposes of this  
15 section—

16 “(A) IN GENERAL.—The term ‘acquired  
17 entity’ means the domestic corporation or part-  
18 nership substantially all of the properties of  
19 which are directly or indirectly acquired in an  
20 acquisition described in subsection (a)(2)(A) to  
21 which this subsection applies.

22 “(B) AGGREGATION RULES.—Any domes-  
23 tic person bearing a relationship described in  
24 section 267(b) or 707(b) to an acquired entity  
25 shall be treated as an acquired entity with re-



1           spect to the acquisition described in subpara-  
2           graph (A).

3           “(3) APPLICABLE PERIOD.—For purposes of  
4           this section—

5                 “(A) IN GENERAL.—The term ‘applicable  
6           period’ means the period—

7                         “(i) beginning on the first date prop-  
8                         erties are acquired as part of the acquisi-  
9                         tion described in subsection (a)(2)(A) to  
10                        which this subsection applies, and

11                       “(ii) ending on the date which is 10  
12                       years after the last date properties are ac-  
13                       quired as part of such acquisition.

14                 “(B) SPECIAL RULE FOR INVERSIONS OC-  
15           CURRING BEFORE MARCH 21, 2002.—In the case  
16           of any acquired entity to which paragraph  
17           (1)(A) applies, the applicable period shall be the  
18           10-year period beginning on January 1, 2003.

19           “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-  
20   SET.—If subsection (b) applies—

21                 “(1) IN GENERAL.—The taxable income of an  
22           acquired entity (or any expanded affiliated group  
23           which includes such entity) for any taxable year  
24           which includes any portion of the applicable period

1 shall in no event be less than the inversion gain of  
2 the entity for the taxable year.

3 “(2) CREDITS NOT ALLOWED AGAINST TAX ON  
4 INVERSION GAIN.—Credits shall be allowed against  
5 the tax imposed by this chapter on an acquired enti-  
6 ty for any taxable year described in paragraph (1)  
7 only to the extent such tax exceeds the product of—

8 “(A) the amount of the inversion gain for  
9 the taxable year, and

10 “(B) the highest rate of tax specified in  
11 section 11(b)(1).

12 For purposes of determining the credit allowed by  
13 section 901 inversion gain shall be treated as from  
14 sources within the United States.

15 “(3) SPECIAL RULES FOR PARTNERSHIPS.—In  
16 the case of an acquired entity which is a partner-  
17 ship—

18 “(A) the limitations of this subsection shall  
19 apply at the partner rather than the partner-  
20 ship level,

21 “(B) the inversion gain of any partner for  
22 any taxable year shall be equal to the sum of—

23 “(i) the partner’s distributive share of  
24 inversion gain of the partnership for such  
25 taxable year, plus

1           “(ii) income or gain required to be  
2           recognized for the taxable year by the part-  
3           ner under section 367(a), 741, or 1001, or  
4           under any other provision of chapter 1, by  
5           reason of the transfer during the applica-  
6           ble period of any partnership interest of  
7           the partner in such partnership to the for-  
8           eign incorporated entity, and

9           “(C) the highest rate of tax specified in  
10          the rate schedule applicable to the partner  
11          under chapter 1 shall be substituted for the  
12          rate of tax under paragraph (2)(B).

13          “(4) INVERSION GAIN.—For purposes of this  
14          section, the term ‘inversion gain’ means any income  
15          or gain required to be recognized under section 304,  
16          311(b), 367, 1001, or 1248, or under any other pro-  
17          vision of chapter 1, by reason of the transfer during  
18          the applicable period of stock or other properties by  
19          an acquired entity—

20                 “(A) as part of the acquisition described in  
21                 subsection (a)(2)(A) to which subsection (b) ap-  
22                 plies, or

23                 “(B) after such acquisition to a foreign re-  
24                 lated person.

1       The Secretary may provide that income or gain from  
2       the sale of inventories or other transactions in the  
3       ordinary course of a trade or business shall not be  
4       treated as inversion gain under subparagraph (B) to  
5       the extent the Secretary determines such treatment  
6       would not be inconsistent with the purposes of this  
7       section.

8               “(5) COORDINATION WITH SECTION 172 AND  
9       MINIMUM TAX.—Rules similar to the rules of para-  
10      graphs (3) and (4) of section 860E(a) shall apply  
11      for purposes of this section.

12              “(6) STATUTE OF LIMITATIONS.—

13              “(A) IN GENERAL.—The statutory period  
14      for the assessment of any deficiency attrib-  
15      utable to the inversion gain of any taxpayer for  
16      any pre-inversion year shall not expire before  
17      the expiration of 3 years from the date the Sec-  
18      retary is notified by the taxpayer (in such man-  
19      ner as the Secretary may prescribe) of the ac-  
20      quisition described in subsection (a)(2)(A) to  
21      which such gain relates and such deficiency  
22      may be assessed before the expiration of such  
23      3-year period notwithstanding the provisions of  
24      any other law or rule of law which would other-  
25      wise prevent such assessment.

1           “(B) PRE-INVERSION YEAR.—For purposes  
2           of subparagraph (A), the term ‘pre-inversion  
3           year’ means any taxable year if—

4                   “(i) any portion of the applicable pe-  
5                   riod is included in such taxable year, and

6                   “(ii) such year ends before the taxable  
7                   year in which the acquisition described in  
8                   subsection (a)(2)(A) is completed.

9           “(d) SPECIAL RULES APPLICABLE TO ACQUIRED EN-  
10          TITIES TO WHICH SUBSECTION (b) APPLIES.—

11                   “(1) INCREASES IN ACCURACY-RELATED PEN-  
12          ALTIES.—In the case of any underpayment of tax of  
13          an acquired entity to which subsection (b) applies—

14                   “(A) section 6662(a) shall be applied with  
15                   respect to such underpayment by substituting  
16                   ‘30 percent’ for ‘20 percent’, and

17                   “(B) if such underpayment is attributable  
18                   to one or more gross valuation understate-  
19                   ments, the increase in the rate of penalty under  
20                   section 6662(h) shall be to 50 percent rather  
21                   than 40 percent.

22                   “(2) MODIFICATIONS OF LIMITATION ON INTER-  
23          EST DEDUCTION.—In the case of an acquired entity  
24          to which subsection (b) applies, section 163(j) shall  
25          be applied—

1           “(A) without regard to paragraph  
2           (2)(A)(ii) thereof, and

3           “(B) by substituting ‘25 percent’ for ‘50  
4           percent’ each place it appears in paragraph  
5           (2)(B) thereof.

6           “(e) OTHER DEFINITIONS AND SPECIAL RULES.—  
7 For purposes of this section—

8           “(1) RULES FOR APPLICATION OF SUBSECTION  
9           (a)(2).—In applying subsection (a)(2) for purposes  
10          of subsections (a) and (b), the following rules shall  
11          apply:

12           “(A) CERTAIN STOCK DISREGARDED.—  
13          There shall not be taken into account in deter-  
14          mining ownership for purposes of subsection  
15          (a)(2)(B)—

16           “(i) stock held by members of the ex-  
17          panded affiliated group which includes the  
18          foreign incorporated entity, or

19           “(ii) stock of such entity which is sold  
20          in a public offering or private placement  
21          related to the acquisition described in sub-  
22          section (a)(2)(A).

23           “(B) PLAN DEEMED IN CERTAIN CASES.—  
24          If a foreign incorporated entity acquires directly  
25          or indirectly substantially all of the properties

1 of a domestic corporation or partnership during  
2 the 4-year period beginning on the date which  
3 is 2 years before the ownership requirements of  
4 subsection (a)(2)(B) are met with respect to  
5 such domestic corporation or partnership, such  
6 actions shall be treated as pursuant to a plan.

7 “(C) CERTAIN TRANSFERS DIS-  
8 REGARDED.—The transfer of properties or li-  
9 abilities (including by contribution or distribu-  
10 tion) shall be disregarded if such transfers are  
11 part of a plan a principal purpose of which is  
12 to avoid the purposes of this section.

13 “(D) SPECIAL RULE FOR RELATED PART-  
14 NERSHIPS.—For purposes of applying sub-  
15 section (a)(2) to the acquisition of a domestic  
16 partnership, except as provided in regulations,  
17 all partnerships which are under common con-  
18 trol (within the meaning of section 482) shall  
19 be treated as 1 partnership.

20 “(E) TREATMENT OF CERTAIN RIGHTS.—  
21 The Secretary shall prescribe such regulations  
22 as may be necessary—

23 “(i) to treat warrants, options, con-  
24 tracts to acquire stock, convertible debt in-

1                   struments, and other similar interests as  
2                   stock, and

3                   “(ii) to treat stock as not stock.

4                   “(2) EXPANDED AFFILIATED GROUP.—The  
5                   term ‘expanded affiliated group’ means an affiliated  
6                   group as defined in section 1504(a) but without re-  
7                   gard to section 1504(b)(3), except that section  
8                   1504(a) shall be applied by substituting ‘more than  
9                   50 percent’ for ‘at least 80 percent’ each place it ap-  
10                  pears.

11                  “(3) FOREIGN INCORPORATED ENTITY.—The  
12                  term ‘foreign incorporated entity’ means any entity  
13                  which is, or but for subsection (a)(1) would be,  
14                  treated as a foreign corporation for purposes of this  
15                  title.

16                  “(4) FOREIGN RELATED PERSON.—The term  
17                  ‘foreign related person’ means, with respect to any  
18                  acquired entity, a foreign person which—

19                         “(A) bears a relationship to such entity de-  
20                         scribed in section 267(b) or 707(b), or

21                         “(B) is under the same common control  
22                         (within the meaning of section 482) as such en-  
23                         tity.

24                  “(5) SUBSEQUENT ACQUISITIONS BY UNRE-  
25                  LATED DOMESTIC CORPORATIONS.—



1           “(A) IN GENERAL.—Subject to such condi-  
2           tions, limitations, and exceptions as the Sec-  
3           retary may prescribe, if, after an acquisition de-  
4           scribed in subsection (a)(2)(A) to which sub-  
5           section (b) applies, a domestic corporation stock  
6           of which is traded on an established securities  
7           market acquires directly or indirectly any prop-  
8           erties of one or more acquired entities in a  
9           transaction with respect to which the require-  
10          ments of subparagraph (B) are met, this sec-  
11          tion shall cease to apply to any such acquired  
12          entity with respect to which such requirements  
13          are met.

14          “(B) REQUIREMENTS.—The requirements  
15          of the subparagraph are met with respect to a  
16          transaction involving any acquisition described  
17          in subparagraph (A) if—

18               “(i) before such transaction the do-  
19               mestic corporation did not have a relation-  
20               ship described in section 267(b) or 707(b),  
21               and was not under common control (within  
22               the meaning of section 482), with the ac-  
23               quired entity, or any member of an ex-  
24               panded affiliated group including such en-  
25               tity, and

1                   “(ii) after such transaction, such ac-  
2                   quired entity—

3                   “(I) is a member of the same ex-  
4                   panded affiliated group which includes  
5                   the domestic corporation or has such  
6                   a relationship or is under such com-  
7                   mon control with any member of such  
8                   group, and

9                   “(II) is not a member of, and  
10                  does not have such a relationship and  
11                  is not under such common control  
12                  with any member of, the expanded af-  
13                  filiated group which before such ac-  
14                  quisition included such entity.

15               “(f) REGULATIONS.—The Secretary shall provide  
16 such regulations as are necessary to carry out this section,  
17 including regulations providing for such adjustments to  
18 the application of this section as are necessary to prevent  
19 the avoidance of the purposes of this section, including the  
20 avoidance of such purposes through—

21               “(1) the use of related persons, pass-thru or  
22               other noncorporate entities, or other intermediaries,  
23               or

1           “(2) transactions designed to have persons  
2           cease to be (or not become) members of expanded  
3           affiliated groups or related persons.”.

4           (b) INFORMATION REPORTING.—The Secretary of  
5 the Treasury shall exercise the Secretary’s authority under  
6 the Internal Revenue Code of 1986 to require entities in-  
7 volved in transactions to which section 7874 of such Code  
8 (as added by subsection (a)) applies to report to the Sec-  
9 retary, shareholders, partners, and such other persons as  
10 the Secretary may prescribe such information as is nec-  
11 essary to ensure the proper tax treatment of such trans-  
12 actions.

13          (c) CONFORMING AMENDMENT.—The table of sec-  
14 tions for subchapter C of chapter 80 is amended by adding  
15 at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”.

16          (d) TRANSITION RULE FOR CERTAIN REGULATED  
17 INVESTMENT COMPANIES AND UNIT INVESTMENT  
18 TRUSTS.—Notwithstanding section 7874 of the Internal  
19 Revenue Code of 1986 (as added by subsection (a)), a reg-  
20 ulated investment company, or other pooled fund or trust  
21 specified by the Secretary of the Treasury, may elect to  
22 recognize gain by reason of section 367(a) of such Code  
23 with respect to a transaction under which a foreign incor-  
24 porated entity is treated as an inverted domestic corpora-  
25 tion under section 7874(a) of such Code by reason of an

1 acquisition completed after March 20, 2002, and before  
2 January 1, 2004.

3 (e) DISCLOSURE OF CORPORATE EXPATRIATION  
4 TRANSACTIONS.—

5 (1) IN GENERAL.—Section 14 of the Securities  
6 Exchange Act of 1934 (15 U.S.C. 78n) is amended  
7 by adding at the end the following new subsection:

8 “(i) PROXY SOLICITATIONS IN CONNECTION WITH  
9 CORPORATE EXPATRIATION TRANSACTIONS.—

10 “(1) DISCLOSURE TO SHAREHOLDERS OF EF-  
11 FECTS OF CORPORATE EXPATRIATION TRANS-  
12 ACTION.—The Commission shall, by rule, require  
13 that each domestic issuer shall prominently disclose,  
14 not later than 5 business days before any share-  
15 holder vote relating to a corporate expatriation  
16 transaction, as a separate and distinct document ac-  
17 companying each proxy statement relating to the  
18 transaction—

19 “(A) the number of employees of the do-  
20 mestic issuer that would be located in the new  
21 foreign jurisdiction of incorporation or organi-  
22 zation of that issuer upon completion of the  
23 corporate expatriation transaction;

24 “(B) how the rights of holders of the secu-  
25 rities of the domestic issuer would be impacted

1 by a completed corporate expatriation trans-  
2 action, and any differences in such rights before  
3 and after a completed corporate expatriation  
4 transaction; and

5 “(C) that, as a result of a completed cor-  
6 porate expatriation transaction, any taxable  
7 holder of the securities of the domestic issuer  
8 shall be subject to the taxation of any capital  
9 gains realized with respect to such securities,  
10 and the amount of any such capital gains tax  
11 that would apply as a result of the transaction.

12 “(2) DEFINITIONS.—In this subsection, the fol-  
13 lowing definitions shall apply:

14 “(A) CORPORATE EXPATRIATION TRANS-  
15 ACTION.—The term ‘corporate expatriation  
16 transaction’ means any transaction, or series of  
17 related transactions, described in subsection (a)  
18 or (b) of section 7874 of the Internal Revenue  
19 Code of 1986.

20 “(A) DOMESTIC ISSUER.—The term ‘do-  
21 mestic issuer’ means an issuer created or orga-  
22 nized in the United States or under the law of  
23 the United States or of any State.”

24 (2) EFFECTIVE DATE.—Section 14(i) of the Se-  
25 curities Exchange Act of 1934 (as added by this

1 subsection) shall apply with respect to corporate ex-  
 2 patriation transactions (as defined in that section  
 3 14(i)) proposed on and after the date of enactment  
 4 of this Act.

5 **SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.**  
 6

7 (a) IN GENERAL.—Subpart A of part II of sub-  
 8 chapter N of chapter 1 is amended by inserting after sec-  
 9 tion 877 the following new section:

10 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

11 “(a) GENERAL RULES.—For purposes of this sub-  
 12 title—

13 “(1) MARK TO MARKET.—Except as provided in  
 14 subsections (d) and (f), all property of a covered ex-  
 15 patriate to whom this section applies shall be treated  
 16 as sold on the day before the expatriation date for  
 17 its fair market value.

18 “(2) RECOGNITION OF GAIN OR LOSS.—In the  
 19 case of any sale under paragraph (1)—

20 “(A) notwithstanding any other provision  
 21 of this title, any gain arising from such sale  
 22 shall be taken into account for the taxable year  
 23 of the sale, and

24 “(B) any loss arising from such sale shall  
 25 be taken into account for the taxable year of

1 the sale to the extent otherwise provided by this  
2 title, except that section 1091 shall not apply to  
3 any such loss.

4 Proper adjustment shall be made in the amount of  
5 any gain or loss subsequently realized for gain or  
6 loss taken into account under the preceding sen-  
7 tence.

8 “(3) EXCLUSION FOR CERTAIN GAIN.—

9 “(A) IN GENERAL.—The amount which,  
10 but for this paragraph, would be includible in  
11 the gross income of any individual by reason of  
12 this section shall be reduced (but not below  
13 zero) by \$600,000. For purposes of this para-  
14 graph, allocable expatriation gain taken into ac-  
15 count under subsection (f)(2) shall be treated in  
16 the same manner as an amount required to be  
17 includible in gross income.

18 “(B) COST-OF-LIVING ADJUSTMENT.—

19 “(i) IN GENERAL.—In the case of an  
20 expatriation date occurring in any calendar  
21 year after 2004, the \$600,000 amount  
22 under subparagraph (A) shall be increased  
23 by an amount equal to—

24 “(I) such dollar amount, multi-  
25 plied by

1                   “(II) the cost-of-living adjust-  
2                   ment determined under section 1(f)(3)  
3                   for such calendar year, determined by  
4                   substituting ‘calendar year 2003’ for  
5                   ‘calendar year 1992’ in subparagraph  
6                   (B) thereof.

7                   “(ii) ROUNDING RULES.—If any  
8                   amount after adjustment under clause (i)  
9                   is not a multiple of \$1,000, such amount  
10                  shall be rounded to the next lower multiple  
11                  of \$1,000.

12                  “(4) ELECTION TO CONTINUE TO BE TAXED AS  
13                  UNITED STATES CITIZEN.—

14                  “(A) IN GENERAL.—If a covered expatriate  
15                  elects the application of this paragraph—

16                         “(i) this section (other than this para-  
17                         graph and subsection (i)) shall not apply to  
18                         the expatriate, but

19                         “(ii) in the case of property to which  
20                         this section would apply but for such elec-  
21                         tion, the expatriate shall be subject to tax  
22                         under this title in the same manner as if  
23                         the individual were a United States citizen.



1           “(B) REQUIREMENTS.—Subparagraph (A)  
2           shall not apply to an individual unless the indi-  
3           vidual—

4                   “(i) provides security for payment of  
5                   tax in such form and manner, and in such  
6                   amount, as the Secretary may require,

7                   “(ii) consents to the waiver of any  
8                   right of the individual under any treaty of  
9                   the United States which would preclude as-  
10                  sessment or collection of any tax which  
11                  may be imposed by reason of this para-  
12                  graph, and

13                  “(iii) complies with such other re-  
14                  quirements as the Secretary may prescribe.

15           “(C) ELECTION.—An election under sub-  
16           paragraph (A) shall apply to all property to  
17           which this section would apply but for the elec-  
18           tion and, once made, shall be irrevocable. Such  
19           election shall also apply to property the basis of  
20           which is determined in whole or in part by ref-  
21           erence to the property with respect to which the  
22           election was made.

23           “(b) ELECTION TO DEFER TAX.—

24                   “(1) IN GENERAL.—If the taxpayer elects the  
25           application of this subsection with respect to any

1 property treated as sold by reason of subsection (a),  
2 the payment of the additional tax attributable to  
3 such property shall be postponed until the due date  
4 of the return for the taxable year in which such  
5 property is disposed of (or, in the case of property  
6 disposed of in a transaction in which gain is not rec-  
7 ognized in whole or in part, until such other date as  
8 the Secretary may prescribe).

9 “(2) DETERMINATION OF TAX WITH RESPECT  
10 TO PROPERTY.—For purposes of paragraph (1), the  
11 additional tax attributable to any property is an  
12 amount which bears the same ratio to the additional  
13 tax imposed by this chapter for the taxable year  
14 solely by reason of subsection (a) as the gain taken  
15 into account under subsection (a) with respect to  
16 such property bears to the total gain taken into ac-  
17 count under subsection (a) with respect to all prop-  
18 erty to which subsection (a) applies.

19 “(3) TERMINATION OF POSTPONEMENT.—No  
20 tax may be postponed under this subsection later  
21 than the due date for the return of tax imposed by  
22 this chapter for the taxable year which includes the  
23 date of death of the expatriate (or, if earlier, the  
24 time that the security provided with respect to the  
25 property fails to meet the requirements of paragraph

1 (4), unless the taxpayer corrects such failure within  
2 the time specified by the Secretary).

3 “(4) SECURITY.—

4 “(A) IN GENERAL.—No election may be  
5 made under paragraph (1) with respect to any  
6 property unless adequate security is provided to  
7 the Secretary with respect to such property.

8 “(B) ADEQUATE SECURITY.—For purposes  
9 of subparagraph (A), security with respect to  
10 any property shall be treated as adequate secu-  
11 rity if—

12 “(i) it is a bond in an amount equal  
13 to the deferred tax amount under para-  
14 graph (2) for the property, or

15 “(ii) the taxpayer otherwise estab-  
16 lishes to the satisfaction of the Secretary  
17 that the security is adequate.

18 “(5) WAIVER OF CERTAIN RIGHTS.—No elec-  
19 tion may be made under paragraph (1) unless the  
20 taxpayer consents to the waiver of any right under  
21 any treaty of the United States which would pre-  
22 clude assessment or collection of any tax imposed by  
23 reason of this section.

24 “(6) ELECTIONS.—An election under paragraph  
25 (1) shall only apply to property described in the elec-

1       tion and, once made, is irrevocable. An election may  
 2       be made under paragraph (1) with respect to an in-  
 3       terest in a trust with respect to which gain is re-  
 4       quired to be recognized under subsection (f)(1).

5           “(7) INTEREST.—For purposes of section  
 6       6601—

7           “(A) the last date for the payment of tax  
 8       shall be determined without regard to the elec-  
 9       tion under this subsection, and

10          “(B) section 6621(a)(2) shall be applied by  
 11       substituting ‘5 percentage points’ for ‘3 per-  
 12       centage points’ in subparagraph (B) thereof.

13          “(c) COVERED EXPATRIATE.—For purposes of this  
 14       section—

15          “(1) IN GENERAL.—Except as provided in para-  
 16       graph (2), the term ‘covered expatriate’ means an  
 17       expatriate.

18          “(2) EXCEPTIONS.—An individual shall not be  
 19       treated as a covered expatriate if—

20          “(A) the individual—

21           “(i) became at birth a citizen of the  
 22       United States and a citizen of another  
 23       country and, as of the expatriation date,  
 24       continues to be a citizen of, and is taxed  
 25       as a resident of, such other country, and

1                   “(ii) has not been a resident of the  
 2                   United States (as defined in section  
 3                   7701(b)(1)(A)(ii)) during the 5 taxable  
 4                   years ending with the taxable year during  
 5                   which the expatriation date occurs, or

6                   “(B)(i) the individual’s relinquishment of  
 7                   United States citizenship occurs before such in-  
 8                   dividual attains age 18½, and

9                   “(ii) the individual has been a resident of  
 10                  the United States (as so defined) for not more  
 11                  than 5 taxable years before the date of relin-  
 12                  quishment.

13               “(d) EXEMPT PROPERTY; SPECIAL RULES FOR PEN-  
 14               SION PLANS.—

15               “(1) EXEMPT PROPERTY.—This section shall  
 16               not apply to the following:

17               “(A) UNITED STATES REAL PROPERTY IN-  
 18               TERESTS.—Any United States real property in-  
 19               terest (as defined in section 897(c)(1)), other  
 20               than stock of a United States real property  
 21               holding corporation which does not, on the day  
 22               before the expatriation date, meet the require-  
 23               ments of section 897(c)(2).

24               “(B) SPECIFIED PROPERTY.—Any prop-  
 25               erty or interest in property not described in

1           subparagraph (A) which the Secretary specifies  
2           in regulations.

3           “(2) SPECIAL RULES FOR CERTAIN RETIRE-  
4           MENT PLANS.—

5                   “(A) IN GENERAL.—If a covered expatriate  
6           holds on the day before the expatriation date  
7           any interest in a retirement plan to which this  
8           paragraph applies—

9                           “(i) such interest shall not be treated  
10           as sold for purposes of subsection (a)(1),  
11           but

12                           “(ii) an amount equal to the present  
13           value of the expatriate’s nonforfeitable ac-  
14           crued benefit shall be treated as having  
15           been received by such individual on such  
16           date as a distribution under the plan.

17                   “(B) TREATMENT OF SUBSEQUENT DIS-  
18           TRIBUTIONS.—In the case of any distribution  
19           on or after the expatriation date to or on behalf  
20           of the covered expatriate from a plan from  
21           which the expatriate was treated as receiving a  
22           distribution under subparagraph (A), the  
23           amount otherwise includible in gross income by  
24           reason of the subsequent distribution shall be  
25           reduced by the excess of the amount includible

1 in gross income under subparagraph (A) over  
 2 any portion of such amount to which this sub-  
 3 paragraph previously applied.

4 “(C) TREATMENT OF SUBSEQUENT DIS-  
 5 TRIBUTIONS BY PLAN.—For purposes of this  
 6 title, a retirement plan to which this paragraph  
 7 applies, and any person acting on the plan’s be-  
 8 half, shall treat any subsequent distribution de-  
 9 scribed in subparagraph (B) in the same man-  
 10 ner as such distribution would be treated with-  
 11 out regard to this paragraph.

12 “(D) APPLICABLE PLANS.—This para-  
 13 graph shall apply to—

14 “(i) any qualified retirement plan (as  
 15 defined in section 4974(c)),

16 “(ii) an eligible deferred compensation  
 17 plan (as defined in section 457(b)) of an  
 18 eligible employer described in section  
 19 457(e)(1)(A), and

20 “(iii) to the extent provided in regula-  
 21 tions, any foreign pension plan or similar  
 22 retirement arrangements or programs.

23 “(e) DEFINITIONS.—For purposes of this section—

24 “(1) EXPATRIATE.—The term ‘expatriate’  
 25 means—

1           “(A) any United States citizen who relin-  
2           quishes citizenship, and

3           “(B) any long-term resident of the United  
4           States who—

5           “(i) ceases to be a lawful permanent  
6           resident of the United States (within the  
7           meaning of section 7701(b)(6)), or

8           “(ii) commences to be treated as a  
9           resident of a foreign country under the  
10          provisions of a tax treaty between the  
11          United States and the foreign country and  
12          who does not waive the benefits of such  
13          treaty applicable to residents of the foreign  
14          country.

15          “(2) EXPATRIATION DATE.—The term ‘expa-  
16          triation date’ means—

17               “(A) the date an individual relinquishes  
18               United States citizenship, or

19               “(B) in the case of a long-term resident of  
20               the United States, the date of the event de-  
21               scribed in clause (i) or (ii) of paragraph (1)(B).

22          “(3) RELINQUISHMENT OF CITIZENSHIP.—A  
23          citizen shall be treated as relinquishing United  
24          States citizenship on the earliest of—



1           “(A) the date the individual renounces  
2           such individual’s United States nationality be-  
3           fore a diplomatic or consular officer of the  
4           United States pursuant to paragraph (5) of sec-  
5           tion 349(a) of the Immigration and Nationality  
6           Act (8 U.S.C. 1481(a)(5)),

7           “(B) the date the individual furnishes to  
8           the United States Department of State a signed  
9           statement of voluntary relinquishment of  
10          United States nationality confirming the per-  
11          formance of an act of expatriation specified in  
12          paragraph (1), (2), (3), or (4) of section 349(a)  
13          of the Immigration and Nationality Act (8  
14          U.S.C. 1481(a)(1)–(4)),

15          “(C) the date the United States Depart-  
16          ment of State issues to the individual a certifi-  
17          cate of loss of nationality, or

18          “(D) the date a court of the United States  
19          cancels a naturalized citizen’s certificate of nat-  
20          uralization.

21          Subparagraph (A) or (B) shall not apply to any indi-  
22          vidual unless the renunciation or voluntary relin-  
23          quishment is subsequently approved by the issuance  
24          to the individual of a certificate of loss of nationality  
25          by the United States Department of State.

1           “(4) LONG-TERM RESIDENT.—The term ‘long-  
2       term resident’ has the meaning given to such term  
3       by section 877(e)(2).

4           “(f) SPECIAL RULES APPLICABLE TO BENE-  
5       FICIARIES’ INTERESTS IN TRUST.—

6           “(1) IN GENERAL.—Except as provided in para-  
7       graph (2), if an individual is determined under para-  
8       graph (3) to hold an interest in a trust on the day  
9       before the expatriation date—

10           “(A) the individual shall not be treated as  
11       having sold such interest,

12           “(B) such interest shall be treated as a  
13       separate share in the trust, and

14           “(C)(i) such separate share shall be treat-  
15       ed as a separate trust consisting of the assets  
16       allocable to such share,

17           “(ii) the separate trust shall be treated as  
18       having sold its assets on the day before the ex-  
19       patriation date for their fair market value and  
20       as having distributed all of its assets to the in-  
21       dividual as of such time, and

22           “(iii) the individual shall be treated as hav-  
23       ing recontributed the assets to the separate  
24       trust.

1 Subsection (a)(2) shall apply to any income, gain, or  
 2 loss of the individual arising from a distribution de-  
 3 scribed in subparagraph (C)(ii). In determining the  
 4 amount of such distribution, proper adjustments  
 5 shall be made for liabilities of the trust allocable to  
 6 an individual's share in the trust.

7 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-  
 8 FIED TRUSTS.—

9 “(A) IN GENERAL.—If the trust interest  
 10 described in paragraph (1) is an interest in a  
 11 qualified trust—

12 “(i) paragraph (1) and subsection (a)  
 13 shall not apply, and

14 “(ii) in addition to any other tax im-  
 15 posed by this title, there is hereby imposed  
 16 on each distribution with respect to such  
 17 interest a tax in the amount determined  
 18 under subparagraph (B).

19 “(B) AMOUNT OF TAX.—The amount of  
 20 tax under subparagraph (A)(ii) shall be equal to  
 21 the lesser of—

22 “(i) the highest rate of tax imposed by  
 23 section 1(e) for the taxable year which in-  
 24 cludes the day before the expatriation date,

1 multiplied by the amount of the distribu-  
2 tion, or

3 “(ii) the balance in the deferred tax  
4 account immediately before the distribution  
5 determined without regard to any increases  
6 under subparagraph (C)(ii) after the 30th  
7 day preceding the distribution.

8 “(C) DEFERRED TAX ACCOUNT.—For pur-  
9 poses of subparagraph (B)(ii)—

10 “(i) OPENING BALANCE.—The open-  
11 ing balance in a deferred tax account with  
12 respect to any trust interest is an amount  
13 equal to the tax which would have been im-  
14 posed on the allocable expatriation gain  
15 with respect to the trust interest if such  
16 gain had been included in gross income  
17 under subsection (a).

18 “(ii) INCREASE FOR INTEREST.—The  
19 balance in the deferred tax account shall  
20 be increased by the amount of interest de-  
21 termined (on the balance in the account at  
22 the time the interest accrues), for periods  
23 after the 90th day after the expatriation  
24 date, by using the rates and method appli-  
25 cable under section 6621 for underpay-

ments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

“(D) ALLOCABLE EXPATRIATION GAIN.—

For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary’s interest in a trust is the amount of gain which would be allocable to such beneficiary’s vested and nonvested interests in the

1 trust if the beneficiary held directly all assets  
2 allocable to such interests.

3 “(E) TAX DEDUCTED AND WITHHELD.—

4 “(i) IN GENERAL.—The tax imposed  
5 by subparagraph (A)(ii) shall be deducted  
6 and withheld by the trustees from the dis-  
7 tribution to which it relates.

8 “(ii) EXCEPTION WHERE FAILURE TO  
9 WAIVE TREATY RIGHTS.—If an amount  
10 may not be deducted and withheld under  
11 clause (i) by reason of the distributee fail-  
12 ing to waive any treaty right with respect  
13 to such distribution—

14 “(I) the tax imposed by subpara-  
15 graph (A)(ii) shall be imposed on the  
16 trust and each trustee shall be person-  
17 ally liable for the amount of such tax,  
18 and

19 “(II) any other beneficiary of the  
20 trust shall be entitled to recover from  
21 the distributee the amount of such tax  
22 imposed on the other beneficiary.

23 “(F) DISPOSITION.—If a trust ceases to be  
24 a qualified trust at any time, a covered expa-  
25 triate disposes of an interest in a qualified

1 trust, or a covered expatriate holding an inter-  
 2 est in a qualified trust dies, then, in lieu of the  
 3 tax imposed by subparagraph (A)(ii), there is  
 4 hereby imposed a tax equal to the lesser of—

5 “(i) the tax determined under para-  
 6 graph (1) as if the day before the expatria-  
 7 tion date were the date of such cessation,  
 8 disposition, or death, whichever is applica-  
 9 ble, or

10 “(ii) the balance in the tax deferred  
 11 account immediately before such date.

12 Such tax shall be imposed on the trust and  
 13 each trustee shall be personally liable for the  
 14 amount of such tax and any other beneficiary  
 15 of the trust shall be entitled to recover from the  
 16 covered expatriate or the estate the amount of  
 17 such tax imposed on the other beneficiary.

18 “(G) DEFINITIONS AND SPECIAL RULES.—

19 For purposes of this paragraph—

20 “(i) QUALIFIED TRUST.—The term  
 21 ‘qualified trust’ means a trust which is de-  
 22 scribed in section 7701(a)(30)(E).

23 “(ii) VESTED INTEREST.—The term  
 24 ‘vested interest’ means any interest which,

1 as of the day before the expatriation date,  
2 is vested in the beneficiary.

3 “(iii) NONVESTED INTEREST.—The  
4 term ‘nonvested interest’ means, with re-  
5 spect to any beneficiary, any interest in a  
6 trust which is not a vested interest. Such  
7 interest shall be determined by assuming  
8 the maximum exercise of discretion in  
9 favor of the beneficiary and the occurrence  
10 of all contingencies in favor of the bene-  
11 ficiary.

12 “(iv) ADJUSTMENTS.—The Secretary  
13 may provide for such adjustments to the  
14 bases of assets in a trust or a deferred tax  
15 account, and the timing of such adjust-  
16 ments, in order to ensure that gain is  
17 taxed only once.

18 “(v) COORDINATION WITH RETIRE-  
19 MENT PLAN RULES.—This subsection shall  
20 not apply to an interest in a trust which  
21 is part of a retirement plan to which sub-  
22 section (d)(2) applies.

23 “(3) DETERMINATION OF BENEFICIARIES’ IN-  
24 TEREST IN TRUST.—



1           “(A) DETERMINATIONS UNDER PARA-  
2           GRAPH (1).—For purposes of paragraph (1), a  
3           beneficiary’s interest in a trust shall be based  
4           upon all relevant facts and circumstances, in-  
5           cluding the terms of the trust instrument and  
6           any letter of wishes or similar document, histor-  
7           ical patterns of trust distributions, and the ex-  
8           istence of and functions performed by a trust  
9           protector or any similar adviser.

10           “(B) OTHER DETERMINATIONS.—For pur-  
11           poses of this section—

12                   “(i) CONSTRUCTIVE OWNERSHIP.—If  
13                   a beneficiary of a trust is a corporation,  
14                   partnership, trust, or estate, the share-  
15                   holders, partners, or beneficiaries shall be  
16                   deemed to be the trust beneficiaries for  
17                   purposes of this section.

18                   “(ii) TAXPAYER RETURN POSITION.—  
19                   A taxpayer shall clearly indicate on its in-  
20                   come tax return—

21                           “(I) the methodology used to de-  
22                           termine that taxpayer’s trust interest  
23                           under this section, and

24                           “(II) if the taxpayer knows (or  
25                           has reason to know) that any other

1 beneficiary of such trust is using a  
2 different methodology to determine  
3 such beneficiary's trust interest under  
4 this section.

5 “(g) TERMINATION OF DEFERRALS, ETC.—In the  
6 case of any covered expatriate, notwithstanding any other  
7 provision of this title—

8 “(1) any period during which recognition of in-  
9 come or gain is deferred shall terminate on the day  
10 before the expatriation date, and

11 “(2) any extension of time for payment of tax  
12 shall cease to apply on the day before the expatria-  
13 tion date and the unpaid portion of such tax shall  
14 be due and payable at the time and in the manner  
15 prescribed by the Secretary.

16 “(h) IMPOSITION OF TENTATIVE TAX.—

17 “(1) IN GENERAL.—If an individual is required  
18 to include any amount in gross income under sub-  
19 section (a) for any taxable year, there is hereby im-  
20 posed, immediately before the expatriation date, a  
21 tax in an amount equal to the amount of tax which  
22 would be imposed if the taxable year were a short  
23 taxable year ending on the expatriation date.

1           “(2) DUE DATE.—The due date for any tax im-  
2           posed by paragraph (1) shall be the 90th day after  
3           the expatriation date.

4           “(3) TREATMENT OF TAX.—Any tax paid under  
5           paragraph (1) shall be treated as a payment of the  
6           tax imposed by this chapter for the taxable year to  
7           which subsection (a) applies.

8           “(4) DEFERRAL OF TAX.—The provisions of  
9           subsection (b) shall apply to the tax imposed by this  
10          subsection to the extent attributable to gain includ-  
11          ible in gross income by reason of this section.

12          “(i) SPECIAL LIENS FOR DEFERRED TAX  
13          AMOUNTS.—

14               “(1) IMPOSITION OF LIEN.—

15                   “(A) IN GENERAL.—If a covered expatriate  
16                   makes an election under subsection (a)(4) or  
17                   (b) which results in the deferral of any tax im-  
18                   posed by reason of subsection (a), the deferred  
19                   amount (including any interest, additional  
20                   amount, addition to tax, assessable penalty, and  
21                   costs attributable to the deferred amount) shall  
22                   be a lien in favor of the United States on all  
23                   property of the expatriate located in the United  
24                   States (without regard to whether this section  
25                   applies to the property).

1           “(B) DEFERRED AMOUNT.—For purposes  
2           of this subsection, the deferred amount is the  
3           amount of the increase in the covered expatri-  
4           ate’s income tax which, but for the election  
5           under subsection (a)(4) or (b), would have oc-  
6           curred by reason of this section for the taxable  
7           year including the expatriation date.

8           “(2) PERIOD OF LIEN.—The lien imposed by  
9           this subsection shall arise on the expatriation date  
10          and continue until—

11           “(A) the liability for tax by reason of this  
12          section is satisfied or has become unenforceable  
13          by reason of lapse of time, or

14           “(B) it is established to the satisfaction of  
15          the Secretary that no further tax liability may  
16          arise by reason of this section.

17          “(3) CERTAIN RULES APPLY.—The rules set  
18          forth in paragraphs (1), (3), and (4) of section  
19          6324A(d) shall apply with respect to the lien im-  
20          posed by this subsection as if it were a lien imposed  
21          by section 6324A.

22          “(j) REGULATIONS.—The Secretary shall prescribe  
23          such regulations as may be necessary or appropriate to  
24          carry out the purposes of this section.”.

1 (b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS  
2 RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS  
3 FROM EXPATRIATES.—Section 102 (relating to gifts, etc.  
4 not included in gross income) is amended by adding at  
5 the end the following new subsection:

6 “(d) GIFTS AND INHERITANCES FROM COVERED EX-  
7 PATRIATES.—

8 “(1) IN GENERAL.—Subsection (a) shall not ex-  
9 clude from gross income the value of any property  
10 acquired by gift, bequest, devise, or inheritance from  
11 a covered expatriate after the expatriation date. For  
12 purposes of this subsection, any term used in this  
13 subsection which is also used in section 877A shall  
14 have the same meaning as when used in section  
15 877A.

16 “(2) EXCEPTIONS FOR TRANSFERS OTHERWISE  
17 SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1)  
18 shall not apply to any property if either—

19 “(A) the gift, bequest, devise, or inherit-  
20 ance is—

21 “(i) shown on a timely filed return of  
22 tax imposed by chapter 12 as a taxable gift  
23 by the covered expatriate, or

24 “(ii) included in the gross estate of  
25 the covered expatriate for purposes of

1 chapter 11 and shown on a timely filed re-  
2 turn of tax imposed by chapter 11 of the  
3 estate of the covered expatriate, or

4 “(B) no such return was timely filed but  
5 no such return would have been required to be  
6 filed even if the covered expatriate were a cit-  
7 izen or long-term resident of the United  
8 States.”.

9 (c) DEFINITION OF TERMINATION OF UNITED  
10 STATES CITIZENSHIP.—Section 7701(a) is amended by  
11 adding at the end the following new paragraph:

12 “(48) TERMINATION OF UNITED STATES CITI-  
13 ZENSHIP.—

14 “(A) IN GENERAL.—An individual shall  
15 not cease to be treated as a United States cit-  
16 izen before the date on which the individual’s  
17 citizenship is treated as relinquished under sec-  
18 tion 877A(e)(3).

19 “(B) DUAL CITIZENS.—Under regulations  
20 prescribed by the Secretary, subparagraph (A)  
21 shall not apply to an individual who became at  
22 birth a citizen of the United States and a cit-  
23 izen of another country.”.

24 (d) INELIGIBILITY FOR VISA OR ADMISSION TO  
25 UNITED STATES.—

1           (1) IN GENERAL.—Section 212(a)(10)(E) of the  
2       Immigration and Nationality Act (8 U.S.C.  
3       1182(a)(10)(E)) is amended to read as follows:

4           “(E) FORMER CITIZENS NOT IN COMPLI-  
5       ANCE WITH EXPATRIATION REVENUE PROVI-  
6       SIONS.—Any alien who is a former citizen of  
7       the United States who relinquishes United  
8       States citizenship (within the meaning of sec-  
9       tion 877A(e)(3) of the Internal Revenue Code  
10      of 1986) and who is not in compliance with sec-  
11      tion 877A of such Code (relating to expatria-  
12      tion).”.

13       (2) AVAILABILITY OF INFORMATION.—

14           (A) IN GENERAL.—Section 6103(l) (relat-  
15      ing to disclosure of returns and return informa-  
16      tion for purposes other than tax administration)  
17      is amended by adding at the end the following  
18      new paragraph:

19           “(19) DISCLOSURE TO DENY VISA OR ADMIS-  
20      SION TO CERTAIN EXPATRIATES.—Upon written re-  
21      quest of the Attorney General or the Attorney Gen-  
22      eral’s delegate, the Secretary shall disclose whether  
23      an individual is in compliance with section 877A  
24      (and if not in compliance, any items of noncompli-  
25      ance) to officers and employees of the Federal agen-

1 cy responsible for administering section  
2 212(a)(10)(E) of the Immigration and Nationality  
3 Act solely for the purpose of, and to the extent nec-  
4 essary in, administering such section  
5 212(a)(10)(E).”.

6 (B) SAFEGUARDS.—

7 (i) TECHNICAL AMENDMENTS.—Para-  
8 graph (4) of section 6103(p) of the Inter-  
9 nal Revenue Code of 1986, as amended by  
10 section 202(b)(2)(B) of the Trade Act of  
11 2002 (Public Law 107–210; 116 Stat.  
12 961), is amended by striking “or (17)”  
13 after “any other person described in sub-  
14 section (l)(16)” each place it appears and  
15 inserting “or (18)”.

16 (ii) CONFORMING AMENDMENTS.—  
17 Section 6103(p)(4) (relating to safe-  
18 guards), as amended by clause (i), is  
19 amended by striking “or (18)” after “any  
20 other person described in subsection  
21 (l)(16)” each place it appears and insert-  
22 ing “(18), or (19)”.

23 (3) EFFECTIVE DATES.—

24 (A) IN GENERAL.—Except as provided in  
25 subparagraph (B), the amendments made by



1           this subsection shall apply to individuals who  
2           relinquish United States citizenship on or after  
3           the date of the enactment of this Act.

4                   (B)     TECHNICAL     AMENDMENTS.—The  
5           amendments made by paragraph (2)(B)(i) shall  
6           take effect as if included in the amendments  
7           made by section 202(b)(2)(B) of the Trade Act  
8           of 2002 (Public Law 107–210; 116 Stat. 961).

9           (e) CONFORMING AMENDMENTS.—

10           (1) Section 877 is amended by adding at the  
11           end the following new subsection:

12           “(g) APPLICATION.—This section shall not apply to  
13           an expatriate (as defined in section 877A(e)) whose expa-  
14           triation date (as so defined) occurs on or after January  
15           1, 2004.”.

16           (2) Section 2107 is amended by adding at the  
17           end the following new subsection:

18           “(f) APPLICATION.—This section shall not apply to  
19           any expatriate subject to section 877A.”.

20           (3) Section 2501(a)(3) is amended by adding at  
21           the end the following new subparagraph:

22                   “(F) APPLICATION.—This paragraph shall  
23           not apply to any expatriate subject to section  
24           877A.”.

1           (4)(A) Paragraph (1) of section 6039G(d) is  
 2           amended by inserting “or 877A” after “section  
 3           877”.

4           (B) The second sentence of section 6039G(e) is  
 5           amended by inserting “or who relinquishes United  
 6           States citizenship (within the meaning of section  
 7           877A(e)(3))” after “877(a)”.

8           (C) Section 6039G(f) is amended by inserting  
 9           “or 877A(e)(2)(B)” after “877(e)(1)”.

10          (f) CLERICAL AMENDMENT.—The table of sections  
 11          for subpart A of part II of subchapter N of chapter 1  
 12          is amended by inserting after the item relating to section  
 13          877 the following new item:

            “Sec. 877A. Tax responsibilities of expatriation.”.

14          (g) EFFECTIVE DATE.—

15           (1) IN GENERAL.—Except as provided in this  
 16           subsection, the amendments made by this section  
 17           shall apply to expatriates (within the meaning of  
 18           section 877A(e) of the Internal Revenue Code of  
 19           1986, as added by this section) whose expatriation  
 20           date (as so defined) occurs on or after January 1,  
 21           2004.

22           (2) GIFTS AND BEQUESTS.—Section 102(d) of  
 23           the Internal Revenue Code of 1986 (as added by  
 24           subsection (b)) shall apply to gifts and bequests re-  
 25           ceived on or after January 1, 2004, from an indi-

1       vidual or the estate of an individual whose expatria-  
 2       tion date (as so defined) occurs after such date.

3               (3) DUE DATE FOR TENTATIVE TAX.—The due  
 4       date under section 877A(h)(2) of the Internal Rev-  
 5       enue Code of 1986, as added by this section, shall  
 6       in no event occur before the 90th day after the date  
 7       of the enactment of this Act.

8       **SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSID-**  
 9               **ERS IN INVERTED CORPORATIONS.**

10       (a) IN GENERAL.—Subtitle D is amended by adding  
 11       at the end the following new chapter:

12       **“CHAPTER 48—STOCK COMPENSATION OF**  
 13       **INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corpora-  
 tions entities.

14       **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**  
 15               **VERTED CORPORATIONS.**

16       “(a) IMPOSITION OF TAX.—In the case of an indi-  
 17       vidual who is a disqualified individual with respect to any  
 18       inverted corporation, there is hereby imposed on such per-  
 19       son a tax equal to 20 percent of the value (determined  
 20       under subsection (b)) of the specified stock compensation  
 21       held (directly or indirectly) by or for the benefit of such  
 22       individual or a member of such individual’s family (as de-  
 23       fined in section 267) at any time during the 12-month

1 period beginning on the date which is 6 months before  
2 the inversion date.

3 “(b) VALUE.—For purposes of subsection (a)—

4 “(1) IN GENERAL.—The value of specified stock  
5 compensation shall be—

6 “(A) in the case of a stock option (or other  
7 similar right) or any stock appreciation right,  
8 the fair value of such option or right, and

9 “(B) in any other case, the fair market  
10 value of such compensation.

11 “(2) DATE FOR DETERMINING VALUE.—The  
12 determination of value shall be made—

13 “(A) in the case of specified stock com-  
14 pensation held on the inversion date, on such  
15 date,

16 “(B) in the case of such compensation  
17 which is canceled during the 6 months before  
18 the inversion date, on the day before such can-  
19 cellation, and

20 “(C) in the case of such compensation  
21 which is granted after the inversion date, on the  
22 date such compensation is granted.

23 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN  
24 RECOGNIZED.—Subsection (a) shall apply to any disquali-  
25 fied individual with respect to an inverted corporation only

1 if gain (if any) on any stock in such corporation is recog-  
 2 nized in whole or part by any shareholder by reason of  
 3 the acquisition referred to in section 7874(a)(2)(A) (deter-  
 4 mined by substituting ‘July 10, 2002’ for ‘March 20,  
 5 2002’) with respect to such corporation.

6 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON  
 7 COMPENSATION.—Subsection (a) shall not apply to—

8 “(1) any stock option which is exercised on the  
 9 inversion date or during the 6-month period before  
 10 such date and to the stock acquired in such exercise,  
 11 if income is recognized under section 83 on or before  
 12 the inversion date with respect to the stock acquired  
 13 pursuant to such exercise, and

14 “(2) any specified stock compensation which is  
 15 exercised, sold, exchanged, distributed, cashed out,  
 16 or otherwise paid during such period in a trans-  
 17 action in which gain or loss is recognized in full.

18 “(e) DEFINITIONS.—For purposes of this section—

19 “(1) DISQUALIFIED INDIVIDUAL.—The term  
 20 ‘disqualified individual’ means, with respect to a cor-  
 21 poration, any individual who, at any time during the  
 22 12-month period beginning on the date which is 6  
 23 months before the inversion date—

1           “(A) is subject to the requirements of sec-  
 2           tion 16(a) of the Securities Exchange Act of  
 3           1934 with respect to such corporation, or

4           “(B) would be subject to such require-  
 5           ments if such corporation were an issuer of eq-  
 6           uity securities referred to in such section.

7           “(2) INVERTED CORPORATION; INVERSION  
 8           DATE.—

9           “(A) INVERTED CORPORATION.—The term  
 10          ‘inverted corporation’ means any corporation to  
 11          which subsection (a) or (b) of section 7874 ap-  
 12          plies determined—

13                 “(i) by substituting ‘July 10, 2002’  
 14                 for ‘March 20, 2002’ in section  
 15                 7874(a)(2)(A), and

16                 “(ii) without regard to subsection  
 17                 (b)(1)(A).

18          Such term includes any predecessor or suc-  
 19          cessor of such a corporation.

20                 “(B) INVERSION DATE.—The term ‘inver-  
 21                 sion date’ means, with respect to a corporation,  
 22                 the date on which the corporation first becomes  
 23                 an inverted corporation.

24                 “(3) SPECIFIED STOCK COMPENSATION.—

1           “(A) IN GENERAL.—The term ‘specified  
2           stock compensation’ means payment (or right  
3           to payment) granted by the inverted corpora-  
4           tion (or by any member of the expanded affili-  
5           ated group which includes such corporation) to  
6           any person in connection with the performance  
7           of services by a disqualified individual for such  
8           corporation or member if the value of such pay-  
9           ment or right is based on (or determined by ref-  
10          erence to) the value (or change in value) of  
11          stock in such corporation (or any such mem-  
12          ber).

13           “(B) EXCEPTIONS.—Such term shall not  
14          include—

15                   “(i) any option to which part II of  
16                   subchapter D of chapter 1 applies, or

17                   “(ii) any payment or right to payment  
18                   from a plan referred to in section  
19                   280G(b)(6).

20           “(4) EXPANDED AFFILIATED GROUP.—The  
21          term ‘expanded affiliated group’ means an affiliated  
22          group (as defined in section 1504(a) without regard  
23          to section 1504(b)(3)); except that section 1504(a)  
24          shall be applied by substituting ‘more than 50 per-  
25          cent’ for ‘at least 80 percent’ each place it appears.

1       “(f) SPECIAL RULES.—For purposes of this sec-  
2 tion—

3               “(1) CANCELLATION OF RESTRICTION.—The  
4       cancellation of a restriction which by its terms will  
5       never lapse shall be treated as a grant.

6               “(2) PAYMENT OR REIMBURSEMENT OF TAX BY  
7       CORPORATION TREATED AS SPECIFIED STOCK COM-  
8       PENSATION.—Any payment of the tax imposed by  
9       this section directly or indirectly by the inverted cor-  
10      poration or by any member of the expanded affili-  
11      ated group which includes such corporation—

12               “(A) shall be treated as specified stock  
13      compensation, and

14               “(B) shall not be allowed as a deduction  
15      under any provision of chapter 1.

16               “(3) CERTAIN RESTRICTIONS IGNORED.—  
17      Whether there is specified stock compensation, and  
18      the value thereof, shall be determined without regard  
19      to any restriction other than a restriction which by  
20      its terms will never lapse.

21               “(4) PROPERTY TRANSFERS.—Any transfer of  
22      property shall be treated as a payment and any right  
23      to a transfer of property shall be treated as a right  
24      to a payment.



1           “(5) OTHER ADMINISTRATIVE PROVISIONS.—

2           For purposes of subtitle F, any tax imposed by this  
3           section shall be treated as a tax imposed by subtitle  
4           A.

5           “(g) REGULATIONS.—The Secretary shall prescribe  
6           such regulations as may be necessary or appropriate to  
7           carry out the purposes of this section.”.

8           (b) DENIAL OF DEDUCTION.—

9           (1) IN GENERAL.—Paragraph (6) of section  
10          275(a) is amended by inserting “48,” after “46,”.

11          (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-  
12          PENSATION REDUCED BY PAYMENT OF EXCISE TAX  
13          ON SPECIFIED STOCK COMPENSATION.—Paragraph  
14          (4) of section 162(m) is amended by adding at the  
15          end the following new subparagraph:

16               “(G) COORDINATION WITH EXCISE TAX ON  
17               SPECIFIED STOCK COMPENSATION.—The dollar  
18               limitation contained in paragraph (1) with re-  
19               spect to any covered employee shall be reduced  
20               (but not below zero) by the amount of any pay-  
21               ment (with respect to such employee) of the tax  
22               imposed by section 5000A directly or indirectly  
23               by the inverted corporation (as defined in such  
24               section) or by any member of the expanded af-

1           filiated group (as defined in such section) which  
2           includes such corporation.”.

3           (c) CONFORMING AMENDMENTS.—

4           (1) The last sentence of section 3121(v)(2)(A)  
5           is amended by inserting before the period “or to any  
6           specified stock compensation (as defined in section  
7           5000A) on which tax is imposed by section 5000A”.

8           (2) The table of chapters for subtitle D is  
9           amended by adding at the end the following new  
10          item:

“Chapter 48. Stock compensation of insiders in inverted corpora-  
tions.”.

11          (d) EFFECTIVE DATE.—The amendments made by  
12          this section shall take effect on July 11, 2002; except that  
13          periods before such date shall not be taken into account  
14          in applying the periods in subsections (a) and (e)(1) of  
15          section 5000A of the Internal Revenue Code of 1986, as  
16          added by this section.

17       **SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOR-**  
18       **EIGN JURISDICTIONS.**

19          (a) IN GENERAL.—Section 845(a) (relating to alloca-  
20          tion in case of reinsurance agreement involving tax avoid-  
21          ance or evasion) is amended by striking “source and char-  
22          acter” and inserting “amount, source, or character”.

1 (b) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to any risk reinsured after April  
 3 11, 2002.

4 **SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUISI-**  
 5 **TIONS.**

6 (a) IN GENERAL.—Subpart B of part III of sub-  
 7 chapter A of chapter 61 is amended by inserting after sec-  
 8 tion 6043 the following new section:

9 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

10 “(a) IN GENERAL.—The acquiring corporation in any  
 11 taxable acquisition shall make a return (according to the  
 12 forms or regulations prescribed by the Secretary) setting  
 13 forth—

14 “(1) a description of the acquisition,

15 “(2) the name and address of each shareholder  
 16 of the acquired corporation who is required to recog-  
 17 nize gain (if any) as a result of the acquisition,

18 “(3) the amount of money and the fair market  
 19 value of other property transferred to each such  
 20 shareholder as part of such acquisition, and

21 “(4) such other information as the Secretary  
 22 may prescribe.

23 To the extent provided by the Secretary, the requirements  
 24 of this section applicable to the acquiring corporation shall

1 be applicable to the acquired corporation and not to the  
2 acquiring corporation.

3 “(b) NOMINEE REPORTING.—Any person who holds  
4 stock as a nominee for another person shall furnish in the  
5 manner prescribed by the Secretary to such other person  
6 the information provided by the corporation under sub-  
7 section (d).

8 “(c) TAXABLE ACQUISITION.—For purposes of this  
9 section, the term ‘taxable acquisition’ means any acquisi-  
10 tion by a corporation of stock in or property of another  
11 corporation if any shareholder of the acquired corporation  
12 is required to recognize gain (if any) as a result of such  
13 acquisition.

14 “(d) STATEMENTS TO BE FURNISHED TO SHARE-  
15 HOLDERS.—Every person required to make a return under  
16 subsection (a) shall furnish to each shareholder whose  
17 name is required to be set forth in such return a written  
18 statement showing—

19 “(1) the name, address, and phone number of  
20 the information contact of the person required to  
21 make such return,

22 “(2) the information required to be shown on  
23 such return with respect to such shareholder, and

24 “(3) such other information as the Secretary  
25 may prescribe.

1 The written statement required under the preceding sen-  
 2 tence shall be furnished to the shareholder on or before  
 3 January 31 of the year following the calendar year during  
 4 which the taxable acquisition occurred.”.

5 (b) ASSESSABLE PENALTIES.—

6 (1) Subparagraph (B) of section 6724(d)(1)  
 7 (defining information return) is amended by redesignig-  
 8 nating clauses (ii) through (xviii) as clauses (iii)  
 9 through (xix), respectively, and by inserting after  
 10 clause (i) the following new clause:

11 “(ii) section 6043A(a) (relating to re-  
 12 turns relating to taxable mergers and ac-  
 13 quisitions),”.

14 (2) Paragraph (2) of section 6724(d) (relating  
 15 to definitions) is amended by redesignating subpara-  
 16 graphs (F) through (BB) as subparagraphs (G)  
 17 through (CC), respectively, and by inserting after  
 18 subparagraph (E) the following new subparagraph:

19 “(F) subsections (b) and (d) of section  
 20 6043A (relating to returns relating to taxable  
 21 mergers and acquisitions).”.

22 (c) CLERICAL AMENDMENT.—The table of sections  
 23 for subpart B of part III of subchapter A of chapter 61  
 24 is amended by inserting after the item relating to section  
 25 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to acquisitions after the date of  
3 the enactment of this Act.

## 4 **Subtitle E—International Tax**

### 5 **SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PUR-** 6 **POSES OF DETERMINING INVESTMENT OF** 7 **EARNINGS IN UNITED STATES PROPERTY.**

8 (a) IN GENERAL.—Subparagraph (A) of section  
9 956(c)(2) is amended to read as follows:

10 “(A) obligations of the United States,  
11 money, or deposits with persons described in  
12 paragraph (4);”.

13 (b) ELIGIBLE PERSONS.—Section 956(c) (relating to  
14 exceptions to definition of United States property) is  
15 amended by adding at the end the following new para-  
16 graph:

17 “(4) FINANCIAL SERVICES PROVIDERS.—

18 “(A) IN GENERAL.—For purposes of para-  
19 graph (2)(A), a person is described in this para-  
20 graph if at least 80 percent of the person’s in-  
21 come is income described in section  
22 904(d)(2)(C)(ii) (and the regulations there-  
23 under) which is derived from persons who are  
24 not related persons.

1           “(B) SPECIAL RULES.—For purposes of  
2           subparagraph (A)—

3                   “(i) all related persons shall be treat-  
4                   ed as 1 person in applying the 80-percent  
5                   test, and

6                   “(ii) there shall be disregarded any  
7                   item of income or gain from a transaction  
8                   or series of transactions a principal pur-  
9                   pose of which is the qualification of a per-  
10                  son as a person described in this para-  
11                  graph.

12           “(C) RELATED PERSON.—For purposes of  
13           this paragraph, the term ‘related person’ has  
14           the meaning given such term by section  
15           954(d)(3).”.

16       (c) EFFECTIVE DATE.—The amendments made by  
17   this section shall take effect on the date of the enactment  
18   of this Act.

19   **SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN**  
20                   **THROUGH COMPLETE LIQUIDATION OF**  
21                   **HOLDING COMPANY.**

22       (a) IN GENERAL.—Section 332 is amended by adding  
23   at the end the following new subsection:

24           “(d) RECOGNITION OF GAIN ON LIQUIDATION OF  
25   CERTAIN HOLDING COMPANIES.—

1           “(1) IN GENERAL.—In the case of any distribu-  
 2           tion to a foreign corporation in complete liquidation  
 3           of an applicable holding company—

4                   “(A) subsection (a) and section 331 shall  
 5                   not apply to such distribution, and

6                   “(B) such distribution shall be treated as  
 7                   a distribution to which section 301 applies.

8           “(2) APPLICABLE HOLDING COMPANY.—For  
 9           purposes of this subsection—

10                   “(A) IN GENERAL.—The term ‘applicable  
 11                   holding company’ means any domestic corpora-  
 12                   tion—

13                           “(i) which is a common parent of an  
 14                           affiliated group,

15                           “(ii) stock of which is directly owned  
 16                           by the distributee foreign corporation,

17                           “(iii) substantially all of the assets of  
 18                           which consist of stock in other members of  
 19                           such affiliated group, and

20                           “(iv) which has not been in existence  
 21                           at all times during the 5 years immediately  
 22                           preceding the date of the liquidation.

23                   “(B) AFFILIATED GROUP.—For purposes  
 24                   of this subsection, the term ‘affiliated group’  
 25                   has the meaning given such term by section



1           1504(a) (without regard to paragraphs (2) and  
2           (4) of section 1504(b)).

3           “(3) COORDINATION WITH SUBPART F.—If the  
4           distributee of a distribution described in paragraph  
5           (1) is a controlled foreign corporation (as defined in  
6           section 957), then notwithstanding paragraph (1) or  
7           subsection (a), such distribution shall be treated as  
8           a distribution to which section 331 applies.

9           “(4) REGULATIONS.—The Secretary shall pro-  
10          vide such regulations as appropriate to prevent the  
11          abuse of this subsection, including regulations which  
12          provide, for the purposes of clause (iv) of paragraph  
13          (2)(A), that a corporation is not in existence for any  
14          period unless it is engaged in the active conduct of  
15          a trade or business or owns a significant ownership  
16          interest in another corporation so engaged.”.

17          (b) EFFECTIVE DATE.—The amendment made by  
18          this section shall apply to distributions in complete liq-  
19          uidation occurring on or after the date of the enactment  
20          of this Act.

1 **SEC. 453. PREVENTION OF MISMATCHING OF INTEREST**  
 2 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**  
 3 **TIONS AND INCOME INCLUSIONS IN TRANS-**  
 4 **ACTIONS WITH RELATED FOREIGN PERSONS.**

5 (a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)  
 6 (relating to special rule for original issue discount on obli-  
 7 gation held by related foreign person) is amended by re-  
 8 designating subparagraph (B) as subparagraph (C) and  
 9 by inserting after subparagraph (A) the following new sub-  
 10 paragraph:

11 “(B) SPECIAL RULE FOR CERTAIN FOR-  
 12 EIGN ENTITIES.—

13 “(i) IN GENERAL.—In the case of any  
 14 debt instrument having original issue dis-  
 15 count which is held by a related foreign  
 16 person which is a foreign personal holding  
 17 company (as defined in section 552), a  
 18 controlled foreign corporation (as defined  
 19 in section 957), or a passive foreign invest-  
 20 ment company (as defined in section  
 21 1297), a deduction shall be allowable to  
 22 the issuer with respect to such original  
 23 issue discount for any taxable year before  
 24 the taxable year in which paid only to the  
 25 extent such original issue discount (re-  
 26 duced by properly allowable deductions and

qualified deficits under section 952(c)(1)(B)) is includible during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

“(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.”.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking “The Secretary” and inserting:

“(A) IN GENERAL.—The Secretary”, and

(2) by adding at the end the following new subparagraph:

“(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any item payable to a foreign personal holding company (as defined in section 552), a con-

1           trolled foreign corporation (as defined in  
2           section 957), or a passive foreign invest-  
3           ment company (as defined in section  
4           1297), a deduction shall be allowable to  
5           the payor with respect to such amount for  
6           any taxable year before the taxable year in  
7           which paid only to the extent that an  
8           amount attributable to such item (reduced  
9           by properly allowable deductions and quali-  
10          fied deficits under section 952(c)(1)(B)) is  
11          includible during such prior taxable year in  
12          the gross income of a United States person  
13          who owns (within the meaning of section  
14          958(a)) stock in such corporation.

15                 “(ii) SECRETARIAL AUTHORITY.—The  
16          Secretary may by regulation exempt trans-  
17          actions from the application of clause (i),  
18          including any transaction which is entered  
19          into by a payor in the ordinary course of  
20          a trade or business in which the payor is  
21          predominantly engaged and in which the  
22          payment of the accrued amounts occurs  
23          within 8½ months after accrual or within  
24          such other period as the Secretary may  
25          prescribe.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to payments accrued on or after  
3 the date of the enactment of this Act.

4 **SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE**  
5 **CERTAIN FOREIGN SOURCE INCOME.**

6 (a) IN GENERAL.—Section 864(c)(4)(B) (relating to  
7 treatment of income from sources without the United  
8 States as effectively connected income) is amended by add-  
9 ing at the end the following new flush sentence:

10 “Any income or gain which is equivalent to any  
11 item of income or gain described in clause (i),  
12 (ii), or (iii) shall be treated in the same manner  
13 as such item for purposes of this subpara-  
14 graph.”.

15 (b) EFFECTIVE DATE.—The amendment made by  
16 this section shall apply to taxable years beginning after  
17 the date of the enactment of this Act.

18 **SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON**  
19 **SALE OF CONTROLLED FOREIGN CORPORA-**  
20 **TION.**

21 (a) IN GENERAL.—Section 904(f)(3) (relating to dis-  
22 positions) is amending by adding at the end the following  
23 new subparagraph:

1           “(D) APPLICATION TO CERTAIN DISPOSI-  
2           TIONS OF STOCK IN CONTROLLED FOREIGN  
3           CORPORATION.—

4           “(i) IN GENERAL.—This paragraph  
5           shall apply to an applicable disposition in  
6           the same manner as if it were a disposition  
7           of property described in subparagraph (A),  
8           except that the exception contained in sub-  
9           paragraph (C)(i) shall not apply.

10          “(ii) APPLICABLE DISPOSITION.—For  
11          purposes of clause (i), the term ‘applicable  
12          disposition’ means any disposition of any  
13          share of stock in a controlled foreign cor-  
14          poration in a transaction or series of trans-  
15          actions if, immediately before such trans-  
16          action or series of transactions, the tax-  
17          payer owned more than 50 percent (by  
18          vote or value) of the stock of the controlled  
19          foreign corporation.

20          “(iii) EXCEPTION.—A disposition  
21          shall not be treated as an applicable dis-  
22          position under clause (ii) if it is part of a  
23          transaction or series of transactions—

24                 “(I) to which section 351 or 721  
25                 applies, or under which the transferor

1 receives stock in a foreign corporation  
2 in exchange for the stock in the con-  
3 trolled foreign corporation and the  
4 stock received is exchanged basis  
5 property (as defined in section  
6 7701(a)(44)), and

7 “(II) immediately after which,  
8 the transferor owns (by vote or value)  
9 at least the same percentage of stock  
10 in the controlled foreign corporation  
11 (or, if the controlled foreign corpora-  
12 tion is not in existence after such  
13 transaction or series of transactions,  
14 in another foreign corporation stock  
15 in which was received by the trans-  
16 feror in exchange for stock in the con-  
17 trolled foreign corporation) as the per-  
18 centage of stock in the controlled for-  
19 eign corporation which the taxpayer  
20 owned immediately before such trans-  
21 action or series of transactions.

22 Clause (i) shall apply to any gain recog-  
23 nized on any disposition to which this  
24 clause applies.

1 “(iv) CONTROLLED FOREIGN COR-  
 2 PORATION.—For purposes of this subpara-  
 3 graph, the term ‘controlled foreign cor-  
 4 poration’ has the meaning given such term  
 5 by section 957.

6 “(v) STOCK OWNERSHIP.—For pur-  
 7 poses of this subparagraph, ownership of  
 8 stock shall be determined under the rules  
 9 of subsections (a) and (b) of section 958.

10 (b) EFFECTIVE DATE.—The amendment made by  
 11 this section shall apply to dispositions after the date of  
 12 the enactment of this Act.

13 **SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**  
 14 **CREDIT ON WITHHOLDING TAXES ON INCOME**  
 15 **OTHER THAN DIVIDENDS.**

16 (a) IN GENERAL.—Section 901 is amended by redес-  
 17 ignating subsection (l) as subsection (m) and by inserting  
 18 after subsection (k) the following new subsection:

19 “(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING  
 20 TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS  
 21 ETC.—

22 “(1) IN GENERAL.—In no event shall a credit  
 23 be allowed under subsection (a) for any withholding  
 24 tax (as defined in subsection (k)) on any item of in-  
 25 come or gain with respect to any property if—



1           “(A) such property is held by the recipient  
 2           of the item for 15 days or less during the 30-  
 3           day period beginning on the date which is 15  
 4           days before the date on which the right to re-  
 5           ceive payment of such item arises, or

6           “(B) to the extent that the recipient of the  
 7           item is under an obligation (whether pursuant  
 8           to a short sale or otherwise) to make related  
 9           payments with respect to positions in substan-  
 10          tially similar or related property.

11          This paragraph shall not apply to any dividend to  
 12          which subsection (k) applies.

13          “(2) EXCEPTION FOR TAXES PAID BY DEAL-  
 14          ERS.—

15               “(A) IN GENERAL.—Paragraph (1) shall  
 16               not apply to any qualified tax with respect to  
 17               any property held in the active conduct in a for-  
 18               eign country of a business as a dealer in such  
 19               property.

20               “(B) QUALIFIED TAX.—For purposes of  
 21               subparagraph (A), the term ‘qualified tax’  
 22               means a tax paid to a foreign country (other  
 23               than the foreign country referred to in subpara-  
 24               graph (A)) if—

1 “(i) the item to which such tax is at-  
2 tributable is subject to taxation on a net  
3 basis by the country referred to in sub-  
4 paragraph (A), and

5 “(ii) such country allows a credit  
6 against its net basis tax for the full  
7 amount of the tax paid to such other for-  
8 eign country.

9 “(C) DEALER.—For purposes of subpara-  
10 graph (A), the term ‘dealer’ means—

11 “(i) with respect to a security, any  
12 person to whom paragraphs (1) and (2) of  
13 subsection (k) would not apply by reason  
14 of paragraph (4) thereof if such security  
15 were stock, and

16 “(ii) with respect to any other prop-  
17 erty, any person with respect to whom  
18 such property is described in section  
19 1221(a)(1).

20 “(D) REGULATIONS.—The Secretary may  
21 prescribe such regulations as may be appro-  
22 priate to carry out this paragraph, including  
23 regulations to prevent the abuse of the excep-  
24 tion provided by this paragraph and to treat  
25 other taxes as qualified taxes.

1           “(3) EXCEPTIONS.—The Secretary may by reg-  
2           ulation provide that paragraph (1) shall not apply to  
3           property where the Secretary determines that the  
4           application of paragraph (1) to such property is not  
5           necessary to carry out the purposes of this sub-  
6           section.

7           “(4) CERTAIN RULES TO APPLY.—Rules similar  
8           to the rules of paragraphs (5), (6), and (7) of sub-  
9           section (k) shall apply for purposes of this sub-  
10          section.

11          “(5) DETERMINATION OF HOLDING PERIOD.—  
12          Holding periods shall be determined for purposes of  
13          this subsection without regard to section 1235 or  
14          any similar rule.”.

15          (b) CONFORMING AMENDMENT.—The heading of  
16          subsection (k) of section 901 is amended by inserting “ON  
17          DIVIDENDS” after “TAXES”.

18          (c) EFFECTIVE DATE.—The amendments made by  
19          this section shall apply to amounts paid or accrued more  
20          than 30 days after the date of the enactment of this Act.

**Subtitle F—Other Revenue  
Provisions**

**PART I—FINANCIAL INSTRUMENTS**

**SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND  
AND PREFERRED STOCK FUNDS, ETC.**

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.”.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

1 “(7) CROSS REFERENCE.—

“For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).”.

2 (c) EFFECTIVE DATE.—The amendments made by  
3 this section shall apply to purchases and dispositions after  
4 the date of the enactment of this Act.

5 **SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES**  
6 **TO PARTNERS WHICH ARE C CORPORATIONS.**

7 (a) IN GENERAL.—Section 163(j) (relating to limita-  
8 tion on deduction for interest on certain indebtedness) is  
9 amended by redesignating paragraph (8) as paragraph (9)  
10 and by inserting after paragraph (7) the following new  
11 paragraph:

12 “(8) ALLOCATIONS TO CERTAIN CORPORATE  
13 PARTNERS.—If a C corporation is a partner in a  
14 partnership—

15 “(A) the corporation’s allocable share of  
16 indebtedness and interest income of the part-  
17 nership shall be taken into account in applying  
18 this subsection to the corporation, and

19 “(B) if a deduction is not disallowed under  
20 this subsection with respect to any interest ex-  
21 pense of the partnership, this subsection shall  
22 be applied separately in determining whether a  
23 deduction is allowable to the corporation with

1           respect to the corporation’s allocable share of  
2           such interest expense.”.

3           (b) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 the date of the enactment of this Act.

6 **SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTED-**  
7 **NESS INCOME REALIZED ON SATISFACTION**  
8 **OF DEBT WITH PARTNERSHIP INTEREST.**

9           (a) **IN GENERAL.**—Paragraph (8) of section 108(e)  
10 (relating to general rules for discharge of indebtedness (in-  
11 cluding discharges not in title 11 cases or insolvency)) is  
12 amended to read as follows:

13           “(8) **INDEBTEDNESS SATISFIED BY CORPORATE**  
14 **STOCK OR PARTNERSHIP INTEREST.**—For purposes  
15 of determining income of a debtor from discharge of  
16 indebtedness, if—

17                   “(A) a debtor corporation transfers stock,  
18                   or

19                   “(B) a debtor partnership transfers a cap-  
20                   ital or profits interest in such partnership,  
21 to a creditor in satisfaction of its recourse or non-  
22 recourse indebtedness, such corporation or partner-  
23 ship shall be treated as having satisfied the indebt-  
24 edness with an amount of money equal to the fair  
25 market value of the stock or interest. In the case of

1 any partnership, any discharge of indebtedness in-  
 2 come recognized under this paragraph shall be in-  
 3 cluded in the distributive shares of taxpayers which  
 4 were the partners in the partnership immediately be-  
 5 fore such discharge.”.

6 (b) EFFECTIVE DATE.—The amendment made by  
 7 this section shall apply with respect to cancellations of in-  
 8 debtedness occurring on or after the date of the enactment  
 9 of this Act.

10 **SEC. 464. MODIFICATION OF STRADDLE RULES.**

11 (a) RULES RELATING TO IDENTIFIED STRADDLES.—

12 (1) IN GENERAL.—Subparagraph (A) of section  
 13 1092(a)(2) (relating to special rule for identified  
 14 straddles) is amended to read as follows:

15 “(A) IN GENERAL.—In the case of any  
 16 straddle which is an identified straddle—

17 “(i) paragraph (1) shall not apply  
 18 with respect to identified positions com-  
 19 prising the identified straddle,

20 “(ii) if there is any loss with respect  
 21 to any identified position of the identified  
 22 straddle, the basis of each of the identified  
 23 offsetting positions in the identified strad-  
 24 dle shall be increased by an amount which  
 25 bears the same ratio to the loss as the un-

1 recognized gain with respect to such offset-  
 2 ting position bears to the aggregate unrec-  
 3 ognized gain with respect to all such off-  
 4 setting positions, and

5 “(iii) any loss described in clause (ii)  
 6 shall not otherwise be taken into account  
 7 for purposes of this title.”.

8 (2) IDENTIFIED STRADDLE.—Section  
 9 1092(a)(2)(B) (defining identified straddle) is  
 10 amended—

11 (A) by striking clause (ii) and inserting the  
 12 following:

13 “(ii) to the extent provided by regula-  
 14 tions, the value of each position of which  
 15 (in the hands of the taxpayer immediately  
 16 before the creation of the straddle) is not  
 17 less than the basis of such position in the  
 18 hands of the taxpayer at the time the  
 19 straddle is created, and”, and

20 (B) by adding at the end the following new  
 21 flush sentence:

22 “The Secretary shall prescribe regulations  
 23 which specify the proper methods for clearly  
 24 identifying a straddle as an identified straddle  
 25 (and the positions comprising such straddle),



1           which specify the rules for the application of  
2           this section for a taxpayer which fails to prop-  
3           erly identify the positions of an identified strad-  
4           dle, and which specify the ordering rules in  
5           cases where a taxpayer disposes of less than an  
6           entire position which is part of an identified  
7           straddle.”.

8           (3) UNRECOGNIZED GAIN.—Section 1092(a)(3)  
9           (defining unrecognized gain) is amended by redesign-  
10          nating subparagraph (B) as subparagraph (C) and  
11          by inserting after subparagraph (A) the following  
12          new subparagraph:

13                 “(B) SPECIAL RULE FOR IDENTIFIED  
14                 STRADDLES.—For purposes of paragraph  
15                 (2)(A)(ii), the unrecognized gain with respect to  
16                 any identified offsetting position shall be the ex-  
17                 cess of the fair market value of the position at  
18                 the time of the determination over the fair mar-  
19                 ket value of the position at the time the tax-  
20                 payer identified the position as a position in an  
21                 identified straddle.”.

22           (4) CONFORMING AMENDMENT.—Section  
23           1092(c)(2) is amended by striking subparagraph (B)  
24           and by redesignating subparagraph (C) as subpara-  
25           graph (B).

1 (b) PHYSICALLY SETTLED POSITIONS.—Section  
 2 1092(d) (relating to definitions and special rules) is  
 3 amended by adding at the end the following new para-  
 4 graph:

5 “(8) SPECIAL RULES FOR PHYSICALLY SET-  
 6 TLED POSITIONS.—For purposes of subsection (a), if  
 7 a taxpayer settles a position which is part of a strad-  
 8 dle by delivering property to which the position re-  
 9 lates (and such position, if terminated, would result  
 10 in a realization of a loss), then such taxpayer shall  
 11 be treated as if such taxpayer—

12 “(A) terminated the position for its fair  
 13 market value immediately before the settlement,  
 14 and

15 “(B) sold the property so delivered by the  
 16 taxpayer at its fair market value.”.

17 (c) REPEAL OF STOCK EXCEPTION.—

18 (1) IN GENERAL.—Paragraph (3) of section  
 19 1092(d) (relating to definitions and special rules) is  
 20 amended to read as follows:

21 “(3) SPECIAL RULES FOR STOCK.—For pur-  
 22 poses of paragraph (1)—

23 “(A) IN GENERAL.—The term ‘personal  
 24 property’ includes—

1 “(i) any stock which is a part of a  
 2 straddle at least 1 of the offsetting posi-  
 3 tions of which is a position with respect to  
 4 such stock or substantially similar or re-  
 5 lated property, or

6 “(ii) any stock of a corporation  
 7 formed or availed of to take positions in  
 8 personal property which offset positions  
 9 taken by any shareholder.

10 “(B) RULE FOR APPLICATION.—For pur-  
 11 poses of determining whether subsection (e) ap-  
 12 plies to any transaction with respect to stock  
 13 described in subparagraph (A)(ii), all includible  
 14 corporations of an affiliated group (within the  
 15 meaning of section 1504(a)) shall be treated as  
 16 1 taxpayer.”.

17 (2) CONFORMING AMENDMENT.—Section  
 18 1258(d)(1) is amended by striking “; except that the  
 19 term ‘personal property’ shall include stock”.

20 (d) MODIFICATIONS OF QUALIFIED COVERED CALL  
 21 EXCEPTION.—

22 (1) MARKETS ON WHICH OPTIONS MAY BE  
 23 TRADED.—

24 (A) IN GENERAL.—Section  
 25 1092(c)(4)(B)(i) is amended by striking “or

1 other market which the Secretary determines  
 2 has rules adequate to carry out the purposes of  
 3 this paragraph”.

4 (B) REGULATIONS.—Section  
 5 1092(c)(4)(H) is amended by adding at the end  
 6 the following new sentence: “Such regulations  
 7 shall not add any exchange or market not de-  
 8 scribed in subparagraph (B)(i) to the exchanges  
 9 or markets on which qualified covered call op-  
 10 tions may be traded.”

11 (2) HOLDING PERIOD FOR DIVIDEND EXCLU-  
 12 SION.—The last sentence of section 246(c) is amend-  
 13 ed by inserting: “, other than a qualified covered call  
 14 option to which section 1092(f) applies” before the  
 15 period at the end.

16 (e) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to positions established on or after  
 18 the date of the enactment of this Act.

19 **SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR**  
 20 **ALL READILY TRADEABLE DEBT.**

21 (a) IN GENERAL.—Section 453(f)(4)(B) (relating to  
 22 purchaser evidences of indebtedness payable on demand  
 23 or readily tradeable) is amended by striking “is issued by  
 24 a corporation or a government or political subdivision  
 25 thereof and”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to sales occurring on or after the  
 3 date of the enactment of this Act.

4 **PART II—CORPORATIONS AND PARTNERSHIPS**

5 **SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS**  
 6 **TO CREDITORS IN DIVISIVE REORGANIZA-**  
 7 **TIONS.**

8 (a) IN GENERAL.—Section 361(b)(3) (relating to  
 9 treatment of transfers to creditors) is amended by adding  
 10 at the end the following new sentence: “In the case of a  
 11 reorganization described in section 368(a)(1)(D) with re-  
 12 spect to which stock or securities of the corporation to  
 13 which the assets are transferred are distributed in a trans-  
 14 action which qualifies under section 355, this paragraph  
 15 shall apply only to the extent that the sum of the money  
 16 and the fair market value of other property transferred  
 17 to such creditors does not exceed the adjusted bases of  
 18 such assets transferred.”.

19 (b) LIABILITIES IN EXCESS OF BASIS.—Section  
 20 357(c)(1)(B) is amended by inserting “with respect to  
 21 which stock or securities of the corporation to which the  
 22 assets are transferred are distributed in a transaction  
 23 which qualifies under section 355” after “section  
 24 368(a)(1)(D)”.

1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to transfers of money or other  
 3 property, or liabilities assumed, in connection with a reor-  
 4 ganization occurring on or after the date of the enactment  
 5 of this Act.

6 **SEC. 467. CLARIFICATION OF DEFINITION OF NON-**  
 7 **QUALIFIED PREFERRED STOCK.**

8 (a) IN GENERAL.—Section 351(g)(3)(A) is amended  
 9 by adding at the end the following: “Stock shall not be  
 10 treated as participating in corporate growth to any signifi-  
 11 cant extent unless there is a real and meaningful likeli-  
 12 hood of the shareholder actually participating in the earn-  
 13 ings and growth of the corporation.”.

14 (b) EFFECTIVE DATE.—The amendment made by  
 15 this section shall apply to transactions after May 14,  
 16 2003.

17 **SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED**  
 18 **GROUP OF CORPORATIONS.**

19 (a) IN GENERAL.—Section 1563(a)(2) (relating to  
 20 brother-sister controlled group) is amended by striking  
 21 “possessing—” and all that follows through “(B)” and in-  
 22 serting “possessing”.

23 (b) APPLICATION OF EXISTING RULES TO OTHER  
 24 CODE PROVISIONS.—Section 1563(f) (relating to other

1 definitions and rules) is amended by adding at the end  
2 the following new paragraph:

3           “(5) BROTHER-SISTER CONTROLLED GROUP  
4       DEFINITION FOR PROVISIONS OTHER THAN THIS  
5       PART.—

6           “(A) IN GENERAL.—Except as specifically  
7       provided in an applicable provision, subsection  
8       (a)(2) shall be applied to an applicable provi-  
9       sion as if it read as follows:

10          “(2) BROTHER-SISTER CONTROLLED GROUP.—  
11       Two or more corporations if 5 or fewer persons who  
12       are individuals, estates, or trusts own (within the  
13       meaning of subsection (d)(2) stock possessing—

14           “(A) at least 80 percent of the total com-  
15       bined voting power of all classes of stock enti-  
16       tled to vote, or at least 80 percent of the total  
17       value of shares of all classes of stock, of each  
18       corporation, and

19           “(B) more than 50 percent of the total  
20       combined voting power of all classes of stock  
21       entitled to vote or more than 50 percent of the  
22       total value of shares of all classes of stock of  
23       each corporation, taking into account the stock  
24       ownership of each such person only to the ex-

1           tent such stock ownership is identical with re-  
2           spect to each such corporation.’

3           “(B) APPLICABLE PROVISION.—For pur-  
4           poses of this paragraph, an applicable provision  
5           is any provision of law (other than this part)  
6           which incorporates the definition of controlled  
7           group of corporations under subsection (a).”.

8           (c) EFFECTIVE DATE.—The amendments made by  
9           this section shall apply to taxable years beginning after  
10          the date of the enactment of this Act.

11   **SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNEC-**  
12                   **TION WITH PARTNERSHIP DISTRIBUTIONS**  
13                   **AND TRANSFERS OF PARTNERSHIP INTER-**  
14                   **ESTS.**

15          (a) IN GENERAL.—Section 754 is repealed.

16          (b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED  
17   PARTNERSHIP PROPERTY.—Section 734 is amended—

18               (1) by striking “, with respect to which the elec-  
19               tion provided in section 754 is in effect,” in the mat-  
20               ter preceding paragraph (1) of subsection (b),

21               (2) by striking “(as adjusted by section  
22               732(d))” both places it appears in subsection (b),

23               (3) by striking the last sentence of subsection  
24               (b),



1           (4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

4           (5) by striking “**OPTIONAL**” in the heading.

5           (c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

7           (1) by striking “with respect to which the election provided in section 754 is in effect” in the matter preceding paragraph (1) of subsection (b),

10          (2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

13          (3) by adding at the end the following new subsection:

15          “(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by

1 the partnership, subject to such limitations as may be pro-  
2 vided by regulations prescribed by the Secretary.”, and

3 (4) by striking “**OPTIONAL**” in the heading.

4 (d) CONFORMING AMENDMENTS.—

5 (1) Subsection (d) of section 732 is repealed.

6 (2) Section 755(a) is amended—

7 (A) by striking “section 734(b) (relating to  
8 the optional adjustment” and inserting “section  
9 734(a) (relating to the adjustment”, and

10 (B) by striking “section 743(b) (relating to  
11 the optional adjustment” and inserting “section  
12 743(a) (relating to the adjustment”.

13 (3) Section 755(c), as added by this Act, is  
14 amended by striking “section 734(b)” and inserting  
15 “section 734(a)”.

16 (4) Section 761(e)(2) is amended by striking  
17 “optional”.

18 (5) Section 774(a) is amended by striking  
19 “743(b)” both places it appears and inserting  
20 “743(a)”.

21 (6) The item relating to section 734 in the table  
22 of sections for subpart B of part II of subchapter K  
23 of chapter 1 is amended by striking “Optional”.

1           (7) The item relating to section 743 in the table  
 2           of sections for subpart C of part II of subchapter K  
 3           of chapter 1 is amended by striking “Optional”.

4           (e) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as provided in para-  
 6           graph (2), the amendments made by this section  
 7           shall apply to transfers and distributions made after  
 8           the date of the enactment of this Act.

9           (2) REPEAL OF SECTION 732(d).—The amend-  
 10          ments made by subsections (b)(2) and (d)(1) shall  
 11          apply to—

12                   (A) except as provided in subparagraph  
 13                   (B), transfers made after the date of the enact-  
 14                   ment of this Act, and

15                   (B) in the case of any transfer made on or  
 16                   before such date to which section 732(d) ap-  
 17                   plies, distributions made after the date which is  
 18                   2 years after such date of enactment.

## 19       **PART III—DEPRECIATION AND AMORTIZATION**

### 20       **SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES** 21       **TO SPORTS FRANCHISES.**

22           (a) IN GENERAL.—Section 197(e) (relating to excep-  
 23           tions to definition of section 197 intangible) is amended  
 24           by striking paragraph (6) and by redesignating para-  
 25           graphs (7) and (8) as paragraphs (6) and (7), respectively.

1 (b) CONFORMING AMENDMENTS.—

2 (1)(A) Section 1056 (relating to basis limitation  
3 for player contracts transferred in connection with  
4 the sale of a franchise) is repealed.

5 (B) The table of sections for part IV of sub-  
6 chapter O of chapter 1 is amended by striking the  
7 item relating to section 1056.

8 (2) Section 1245(a) (relating to gain from dis-  
9 position of certain depreciable property) is amended  
10 by striking paragraph (4).

11 (3) Section 1253 (relating to transfers of fran-  
12 chises, trademarks, and trade names) is amended by  
13 striking subsection (e).

14 (c) EFFECTIVE DATES.—

15 (1) IN GENERAL.—Except as provided in para-  
16 graph (2), the amendments made by this section  
17 shall apply to property acquired after the date of the  
18 enactment of this Act.

19 (2) SECTION 1245.—The amendment made by  
20 subsection (b)(2) shall apply to franchises acquired  
21 after the date of the enactment of this Act.

22 **SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.**

23 (a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E)  
24 (defining 15-year property) is amended by striking “and”  
25 at the end of clause (ii), by striking the period at the end

1 of clause (iii) and inserting “, and”, and by adding at the  
 2 end the following new clause:

3 “(iv) initial clearing and grading land  
 4 improvements with respect to gas utility  
 5 property.”.

6 (b) ELECTRIC UTILITY PROPERTY.—Section  
 7 168(e)(3) is amended by adding at the end the following  
 8 new subparagraph:

9 “(F) 20-YEAR PROPERTY.—The term ‘20-  
 10 year property’ means initial clearing and grad-  
 11 ing land improvements with respect to any elec-  
 12 tric utility transmission and distribution  
 13 plant.”.

14 (c) CONFORMING AMENDMENTS.—The table con-  
 15 tained in section 168(g)(3)(B) is amended—

16 (1) by inserting “or (E)(iv)” after “(E)(iii)”,  
 17 and

18 (2) by adding at the end the following new  
 19 item:

“(F) ..... 25”.

20 (d) EFFECTIVE DATE.—The amendments made by  
 21 this section shall apply to property placed in service after  
 22 the date of the enactment of this Act.

1 **SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION**  
2 **OF CERTAIN PASSENGER AUTOMOBILES.**

3 (a) IN GENERAL.—Section 179(b) of the Internal  
4 Revenue Code of 1986 (relating to limitations) is amended  
5 by adding at the end the following new paragraph:

6 “(6) LIMITATION ON COST TAKEN INTO AC-  
7 COUNT FOR CERTAIN PASSENGER VEHICLES.—

8 “(A) IN GENERAL.—The cost of any sport  
9 utility vehicle for any taxable year which may  
10 be taken into account under this section shall  
11 not exceed \$25,000.

12 “(B) SPORT UTILITY VEHICLE.—For pur-  
13 poses of subparagraph (A)—

14 “(i) IN GENERAL.—The term ‘sport  
15 utility vehicle’ means any 4-wheeled vehi-  
16 cle—

17 “(I) which is primarily designed  
18 or which can be used to carry pas-  
19 sengers over public streets, roads, or  
20 highways (except any vehicle operated  
21 exclusively on a rail or rails),

22 “(II) which is not subject to sec-  
23 tion 280F, and

24 “(III) which is rated at not more  
25 than 14,000 pounds gross vehicle  
26 weight.

1                   “(ii)     CERTAIN     VEHICLES     EX-  
2                   CLUDED.—Such term does not include any  
3                   vehicle which—

4                   “(I) is designed to have a seating  
5                   capacity of more than 9 persons be-  
6                   hind the driver’s seat,

7                   “(II) is equipped with a cargo  
8                   area of at least 6 feet in interior  
9                   length which is an open area or is de-  
10                  signed for use as an open area but is  
11                  enclosed by a cap and is not readily  
12                  accessible directly from the passenger  
13                  compartment, or

14                  “(III) has an integral enclosure,  
15                  fully enclosing the driver compartment  
16                  and load carrying device, does not  
17                  have seating rearward of the driver’s  
18                  seat, and has no body section pro-  
19                  truding more than 30 inches ahead of  
20                  the leading edge of the windshield.”.

21           (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to property placed in service after  
23 the date of the enactment of this Act.

1 **SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR IN-**  
2 **TANGIBLES.**

3 (a) **START-UP EXPENDITURES.—**

4 (1) **ALLOWANCE OF DEDUCTION.—**Paragraph  
5 (1) of section 195(b) (relating to start-up expendi-  
6 tures) is amended to read as follows:

7 “(1) **ALLOWANCE OF DEDUCTION.—**If a tax-  
8 payer elects the application of this subsection with  
9 respect to any start-up expenditures—

10 “(A) the taxpayer shall be allowed a deduc-  
11 tion for the taxable year in which the active  
12 trade or business begins in an amount equal to  
13 the lesser of—

14 “(i) the amount of start-up expendi-  
15 tures with respect to the active trade or  
16 business, or

17 “(ii) \$5,000, reduced (but not below  
18 zero) by the amount by which such start-  
19 up expenditures exceed \$50,000, and

20 “(B) the remainder of such start-up ex-  
21 penditures shall be allowed as a deduction rat-  
22 ably over the 180-month period beginning with  
23 the month in which the active trade or business  
24 begins.”.



1           (2) CONFORMING AMENDMENT.—Subsection (b)  
2       of section 195 is amended by striking “AMORTIZE”  
3       and inserting “DEDUCT” in the heading.

4       (b) ORGANIZATIONAL EXPENDITURES.—Subsection  
5       (a) of section 248 (relating to organizational expenditures)  
6       is amended to read as follows:

7       “(a) ELECTION TO DEDUCT.—If a corporation elects  
8       the application of this subsection (in accordance with reg-  
9       ulations prescribed by the Secretary) with respect to any  
10      organizational expenditures—

11           “(1) the corporation shall be allowed a deduc-  
12          tion for the taxable year in which the corporation be-  
13          gins business in an amount equal to the lesser of—

14                  “(A) the amount of organizational expendi-  
15                 tures with respect to the taxpayer, or

16                  “(B) \$5,000, reduced (but not below zero)  
17                 by the amount by which such organizational ex-  
18                 penditures exceed \$50,000, and

19           “(2) the remainder of such organizational ex-  
20          penditures shall be allowed as a deduction ratably  
21          over the 180-month period beginning with the month  
22          in which the corporation begins business.”.

23       (c) TREATMENT OF ORGANIZATIONAL AND SYNDICA-  
24      TION FEES OR PARTNERSHIPS.—

1           (1) IN GENERAL.—Section 709(b) (relating to  
2           amortization of organization fees) is amended by re-  
3           designating paragraph (2) as paragraph (3) and by  
4           amending paragraph (1) to read as follows:

5           “(1) ALLOWANCE OF DEDUCTION.—If a tax-  
6           payer elects the application of this subsection (in ac-  
7           cordance with regulations prescribed by the Sec-  
8           retary) with respect to any organizational ex-  
9           penses—

10           “(A) the taxpayer shall be allowed a deduc-  
11           tion for the taxable year in which the partner-  
12           ship begins business in an amount equal to the  
13           lesser of—

14           “(i) the amount of organizational ex-  
15           penses with respect to the partnership, or

16           “(ii) \$5,000, reduced (but not below  
17           zero) by the amount by which such organi-  
18           zational expenses exceed \$50,000, and

19           “(B) the remainder of such organizational  
20           expenses shall be allowed as a deduction ratably  
21           over the 180-month period beginning with the  
22           month in which the partnership begins busi-  
23           ness.

24           “(2) DISPOSITIONS BEFORE CLOSE OF AMORTI-  
25           ZATION PERIOD.—In any case in which a partner-

1 ship is liquidated before the end of the period to  
 2 which paragraph (1)(B) applies, any deferred ex-  
 3 penses attributable to the partnership which were  
 4 not allowed as a deduction by reason of this section  
 5 may be deducted to the extent allowable under sec-  
 6 tion 165.”.

7 (2) CONFORMING AMENDMENT.—Subsection (b)  
 8 of section 709 is amended by striking “AMORTIZA-  
 9 TION” and inserting “DEDUCTION” in the heading.

10 (d) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to amounts paid or incurred after  
 12 the date of the enactment of this Act.

13 **SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPER-**  
 14 **ATIONS.**

15 (a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-  
 16 EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subpara-  
 17 graph (A) of section 168(g)(3) (relating to special rules  
 18 for determining class life) is amended by inserting “(not-  
 19 withstanding any other subparagraph of this paragraph)”  
 20 after “shall”.

21 (b) LIMITATION ON DEPRECIATION PERIOD FOR  
 22 SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Para-  
 23 graph (1) of section 167(f) is amended by adding at the  
 24 end the following new subparagraph:

1                   “(C) TAX-EXEMPT USE PROPERTY SUB-  
 2                   JECT TO LEASE.—In the case of computer soft-  
 3                   ware which would be tax-exempt use property  
 4                   as defined in subsection (h) of section 168 if  
 5                   such section applied to computer software, the  
 6                   useful life under subparagraph (A) shall not be  
 7                   less than 125 percent of the lease term (within  
 8                   the meaning of section 168(i)(3)).”

9           (c) LEASE TERM TO INCLUDE RELATED SERVICE  
 10   CONTRACTS.—Subparagraph (A) of section 168(i)(3) (re-  
 11   lating to lease term) is amended by striking “and” at the  
 12   end of clause (i), by redesignating clause (ii) as clause  
 13   (iii), and by inserting after clause (i) the following new  
 14   clause:

15                   “(ii) the term of a lease shall include  
 16                   the term of any service contract or similar  
 17                   arrangement (whether or not treated as a  
 18                   lease under section 7701(e))—

19                   “(I) which is part of the same  
 20                   transaction (or series of related trans-  
 21                   actions) which includes the lease, and

22                   “(II) which is with respect to the  
 23                   property subject to the lease or sub-  
 24                   stantially similar property, and”.

1 (d) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to leases entered into after Decem-  
 3 ber 31, 2003.

4 **SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO**  
 5 **PROPERTY USED BY GOVERNMENTS OR**  
 6 **OTHER TAX-EXEMPT ENTITIES.**

7 (a) IN GENERAL.—Subpart C of part II of sub-  
 8 chapter E of chapter 1 (relating to taxable year for which  
 9 deductions taken) is amended by adding at the end the  
 10 following new section:

11 **“SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT**  
 12 **USE PROPERTY.**

13 “(a) LIMITATION ON LOSSES.—Except as otherwise  
 14 provided in this section, a tax-exempt use loss for any tax-  
 15 able year shall not be allowed.

16 “(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—  
 17 Any tax-exempt use loss with respect to any tax-exempt  
 18 use property which is disallowed under subsection (a) for  
 19 any taxable year shall be treated as a deduction with re-  
 20 spect to such property in the next taxable year.

21 “(c) DEFINITIONS.—For purposes of this section—

22 “(1) TAX-EXEMPT USE LOSS.—The term ‘tax-  
 23 exempt use loss’ means, with respect to any taxable  
 24 year, the amount (if any) by which—

25 “(A) the sum of—

1 “(i) the aggregate deductions (other  
 2 than interest) directly allocable to a tax-ex-  
 3 empt use property, plus

4 “(ii) the aggregate deductions for in-  
 5 terest properly allocable to such property,  
 6 exceed

7 “(B) the aggregate income from such  
 8 property.

9 “(2) TAX-EXEMPT USE PROPERTY.—The term  
 10 ‘tax-exempt use property’ has the meaning given to  
 11 such term by section 168(h) (without regard to  
 12 paragraph (1)(C) or (3) thereof and determined as  
 13 if property described in section 167(f)(1)(B) were  
 14 tangible property). Such term shall not include prop-  
 15 erty with respect to which the credit under section  
 16 42 is allowed and which, but for this sentence, would  
 17 be tax-exempt property solely by reason of section  
 18 168(h)(6).

19 “(d) EXCEPTION FOR CERTAIN LEASES.—This sec-  
 20 tion shall not apply to any lease of property which meets  
 21 the requirements of all of the following paragraphs:

22 “(1) PROPERTY NOT FINANCED WITH TAX-EX-  
 23 EMPT BONDS OR FEDERAL FUNDS.—A lease of prop-  
 24 erty meets the requirements of this paragraph if no

1 part of the property was financed (directly or indi-  
2 rectly) from—

3 “(A) the proceeds of an obligation the in-  
4 terest on which is exempt from tax under sec-  
5 tion 103(a) and which (or any refunding bond  
6 of which) is outstanding when the lease is en-  
7 tered into, or

8 “(B) Federal funds.

9 The Secretary may by regulations provide for a de  
10 minimis exception from this paragraph.

11 “(2) AVAILABILITY OF FUNDS.—

12 “(A) IN GENERAL.—A lease of property  
13 meets the requirements of this paragraph if (at  
14 any time during the lease term) not more than  
15 an allowable amount of funds are—

16 “(i) subject to any arrangement re-  
17 ferred to in subparagraph (B), or

18 “(ii) set aside or expected to be set  
19 aside,

20 to or for the benefit of the lessor or a lender,  
21 or to or for the benefit of the lessee to satisfy  
22 the lessee’s obligations or options under the  
23 lease. Funds shall be treated as described in  
24 clause (ii) only if a reasonable person would

1 conclude, based on the facts and circumstances,  
2 that such funds are so described.

3 “(B) ARRANGEMENTS.—The arrangements  
4 referred to in this subparagraph are—

5 “(i) a defeasance arrangement, a loan  
6 by the lessee to the lessor or a lender, a  
7 deposit arrangement, a letter of credit  
8 collateralized with cash or cash equiva-  
9 lents, a payment undertaking agreement, a  
10 lease prepayment, a sinking fund arrange-  
11 ment, or any similar arrangement (whether  
12 or not such arrangement provides credit  
13 support), and

14 “(ii) any other arrangement identified  
15 by the Secretary in regulations.

16 “(C) ALLOWABLE AMOUNT.—

17 “(i) IN GENERAL.—Except as other-  
18 wise provided in this subparagraph, the  
19 term ‘allowable amount’ means an amount  
20 equal to 20 percent of the lessor’s adjusted  
21 basis in the property at the time the lease  
22 is entered into.

23 “(ii) HIGHER AMOUNT PERMITTED IN  
24 CERTAIN CASES.—To the extent provided  
25 in regulations, a higher percentage shall be



1 permitted under clause (i) where necessary  
2 because of the credit-worthiness of the les-  
3 see. In no event may such regulations per-  
4 mit a percentage of more than 50 percent.

5 “(iii) OPTION TO PURCHASE.—If  
6 under the lease the lessee has the option to  
7 purchase the property for a fixed price or  
8 for other than the fair market value of the  
9 property (determined at the time of exer-  
10 cise), the allowable amount at the time  
11 such option may be exercised may not ex-  
12 ceed 50 percent of the price at which such  
13 option may be exercised.

14 “(iv) NO ALLOWABLE AMOUNT FOR  
15 CERTAIN ARRANGEMENTS.—The allowable  
16 amount shall be zero in the case of any ar-  
17 rangement which involves—

18 “(I) a loan from the lessee to the  
19 lessor or a lender,

20 “(II) any deposit, letter of credit,  
21 or payment undertaking agreement  
22 involving a lender, or

23 “(III) any credit support made  
24 available to the lessor in which a lend-

1                   er (if any) does not have a claim  
2                   which is senior to the lessor.

3                   For purposes of subclause (I), the term  
4                   ‘loan’ shall not include any amount treated  
5                   as a loan under section 467 with respect to  
6                   a section 467 rental agreement.

7                   “(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY  
8                   INVESTMENT.—A lease of property meets the re-  
9                   quirements of this paragraph if—

10                   “(A) the lessor—

11                   “(i) has at the time the lease is en-  
12                   tered into an unconditional at-risk equity  
13                   investment (as determined by the Sec-  
14                   retary) in the property of at least 20 per-  
15                   cent of the lessor’s adjusted basis in the  
16                   property as of that time, and

17                   “(ii) maintains such investment  
18                   throughout the term of the lease, and

19                   “(B) the fair market value of the property  
20                   at the end of the lease term is reasonably ex-  
21                   pected to be equal to at least 20 percent of such  
22                   basis.

23                   Subparagraphs (A)(ii) and (B) shall not apply if the  
24                   lease term is described in section 168(h)(1)(C)(ii),  
25                   or in the case of qualified technological equipment,

1 is described in section 168(h)(3). For purposes of  
2 subparagraph (B), the fair market value at the end  
3 of the lease term shall be reduced to the extent that  
4 a person other than the lessor bears a risk of loss  
5 in the value of the property.

6 “(4) LESSEE MAY NOT BEAR MORE THAN MINI-  
7 MAL RISK OF LOSS.—

8 “(A) IN GENERAL.—A lease of property  
9 meets the requirements of this paragraph if  
10 there is no arrangement under which more than  
11 a minimal risk of loss (as determined under  
12 regulations) in the value of the property is  
13 borne by the lessee.

14 “(B) CERTAIN ARRANGEMENTS FAIL RE-  
15 QUIREMENT.—In no event will the requirements  
16 of this paragraph be met if there is any ar-  
17 rangement under which the lessee bears—

18 “(i) any portion of the loss that would  
19 occur if the fair market value of the leased  
20 property were 25 percent less than its rea-  
21 sonably expected fair market value at the  
22 time the lease is terminated, or

23 “(ii) more than 50 percent of the loss  
24 that would occur if the fair market value

1                   of the leased property at the time the lease  
2                   is terminated were zero.

3                   “(5) PROPERTY WITH MORE THAN 7-YEAR  
4                   CLASS LIFE.—In the case of a lease—

5                   “(A) of property with a class life (as de-  
6                   fined in section 168(i)(1)) of more than 7  
7                   years, and

8                   “(B) under which the lessee has the option  
9                   to purchase the property,  
10                  the lease meets the requirements of this paragraph  
11                  only if the purchase price under the option equals  
12                  the fair market value of the property (determined at  
13                  the time of exercise).

14                  “(6) REGULATORY REQUIREMENTS.—A lease of  
15                  property meets the requirements of this paragraph if  
16                  such lease of property meets such requirements as  
17                  the Secretary may prescribe by regulations.

18                  “(e) SPECIAL RULES.—

19                  “(1) TREATMENT OF FORMER TAX-EXEMPT  
20                  USE PROPERTY.—

21                  “(A) IN GENERAL.—In the case of any  
22                  former tax-exempt use property—

23                         “(i) any deduction allowable under  
24                         subsection (b) with respect to such prop-  
25                         erty for any taxable year shall be allowed

1           only to the extent of any net income (with-  
2           out regard to such deduction) from such  
3           property for such taxable year, and

4           “(ii) any portion of such unused de-  
5           duction remaining after application of  
6           clause (i) shall be treated as allowable  
7           under subsection (b) with respect to such  
8           property in the next taxable year.

9           “(B) FORMER TAX-EXEMPT USE PROP-  
10          PERTY.—For purposes of this subsection, the  
11          term ‘former tax-exempt use property’ means  
12          any property which—

13               “(i) is not tax-exempt use property for  
14               the taxable year, but

15               “(ii) was tax-exempt use property for  
16               any prior taxable year.

17          “(2) DISPOSITION OF ENTIRE INTEREST IN  
18          PROPERTY.—If during the taxable year a taxpayer  
19          disposes of the taxpayer’s entire interest in tax-ex-  
20          empt use property (or former tax-exempt use prop-  
21          erty), rules similar to the rules of section 469(g)  
22          shall apply for purposes of this section.

23          “(3) COORDINATION WITH SECTION 469.—This  
24          section shall be applied before the application of sec-  
25          tion 469.

1 “(f) OTHER DEFINITIONS.—For purposes of this sec-  
2 tion—

3 “(1) RELATED PARTIES.—The terms ‘lessor’,  
4 ‘lessee’, and ‘lender’ include any related party (with-  
5 in the meaning of section 197(f)(9)(C)(i)).

6 “(2) LEASE TERM.—The term ‘lease term’ has  
7 the meaning given to such term by section 168(i)(3).

8 “(3) LENDER.—The term ‘lender’ means, with  
9 respect to any lease, a person that makes a loan to  
10 the lessor which is secured (or economically similar  
11 to being secured) by the lease or the leased property.

12 “(4) LOAN.—The term ‘loan’ includes any simi-  
13 lar arrangement.

14 “(g) REGULATIONS.—The Secretary shall prescribe  
15 such regulations as may be necessary or appropriate to  
16 carry out the purposes of this section, including regulation  
17 which—

18 “(1) allow in appropriate cases the aggregation  
19 of property subject to the same lease, and

20 “(2) provide for the determination of the alloca-  
21 tion of interest expense for purposes of this section.”

22 (b) CONFORMING AMENDMENT.—The table of sec-  
23 tions for subpart C of part II of subchapter E of chapter  
24 1 is amended by adding at the end the following new item:

“Sec. 470. Limitations on losses from tax-exempt use property.”

25 (c) EFFECTIVE DATES.—

1           (1) IN GENERAL.—The amendments made by  
2       this section shall apply to leases entered into after  
3       November 18, 2003.

4           (2) LEASES TO FOREIGN ENTITIES.—In the  
5       case of tax-exempt use property leased to a tax-ex-  
6       empt entity which is a foreign person or entity, the  
7       amendments made by this section shall apply to tax-  
8       able years beginning after January 31, 2004, with  
9       respect to leases entered into on or before November  
10      18, 2003.

11           **PART IV—ADMINISTRATIVE PROVISIONS**

12      **SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ES-**  
13                           **TIMATED TAX FOR CERTAIN DEEMED ASSET**  
14                           **SALES.**

15           (a) IN GENERAL.—Paragraph (13) of section 338(h)  
16       (relating to tax on deemed sale not taken into account for  
17       estimated tax purposes) is amended by adding at the end  
18       the following: “The preceding sentence shall not apply  
19       with respect to a qualified stock purchase for which an  
20       election is made under paragraph (10).”.

21           (b) EFFECTIVE DATE.—The amendment made by  
22       subsection (a) shall apply to transactions occurring after  
23       the date of the enactment of this Act.

1 **SEC. 482. EXTENSION OF IRS USER FEES.**

2 (a) IN GENERAL.—Section 7528(c) (relating to ter-  
3 mination) is amended by striking “December 31, 2004”  
4 and inserting “September 30, 2013”.

5 (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to requests after the date of the  
7 enactment of this Act.

8 **SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND**  
9 **INTEREST ON UNDERPAYMENTS RELATED TO**  
10 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**  
11 **MENT.**

12 (a) DETERMINATION OF PENALTY.—

13 (1) IN GENERAL.—Notwithstanding any other  
14 provision of law, in the case of an applicable tax-  
15 payer—

16 (A) the determination as to whether any  
17 interest or applicable penalty is to be imposed  
18 with respect to any arrangement to which any  
19 initiative described in paragraph (2) applied, or  
20 to any underpayment of Federal income tax at-  
21 tributable to items arising in connection with  
22 any arrangement described in paragraph (2),  
23 shall be made without regard to section 6664 of  
24 the Internal Revenue Code of 1986, and

25 (B) if any such interest or applicable pen-  
26 alty is imposed, the amount of such interest or



1           penalty shall be equal to twice that determined  
2           without regard to this section.

3           (2) APPLICABLE TAXPAYER.—For purposes of  
4           this subsection, the term “applicable taxpayer”  
5           means a taxpayer eligible to participate in—

6                   (A) the Department of the Treasury’s Off-  
7                   shore Voluntary Compliance Initiative, or

8                   (B) the Department of the Treasury’s vol-  
9                   untary disclosure initiative which applies to the  
10                  taxpayer by reason of the taxpayer’s under-  
11                  reporting of United States income tax liability  
12                  through financial arrangements which rely on  
13                  the use of offshore arrangements which were  
14                  the subject of the initiative described in sub-  
15                  paragraph (A).

16          (b) DEFINITIONS AND RULES.—For purposes of this  
17          section—

18                  (1) APPLICABLE PENALTY.—The term “appli-  
19                  cable penalty” means any penalty, addition to tax,  
20                  or fine imposed under chapter 68 of the Internal  
21                  Revenue Code of 1986.

22                  (2) VOLUNTARY OFFSHORE COMPLIANCE INI-  
23                  TIATIVE.—The term “Voluntary Offshore Compli-  
24                  ance Initiative” means the program established by  
25                  the Department of the Treasury in January of 2003

1 under which any taxpayer was eligible to voluntarily  
 2 disclose previously undisclosed income on assets  
 3 placed in offshore accounts and accessed through  
 4 credit card and other financial arrangements.

5 (3) PARTICIPATION.—A taxpayer shall be treat-  
 6 ed as having participated in the Voluntary Offshore  
 7 Compliance Initiative if the taxpayer submitted the  
 8 request in a timely manner and all information re-  
 9 quested by the Secretary of the Treasury or his dele-  
 10 gate within a reasonable period of time following the  
 11 request.

12 (c) EFFECTIVE DATE.—The provisions of this section  
 13 shall apply to interest, penalties, additions to tax, and  
 14 fines with respect to any taxable year if as of the date  
 15 of the enactment of this Act, the assessment of any tax,  
 16 penalty, or interest with respect to such taxable year is  
 17 not prevented by the operation of any law or rule of law.

18 **SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN IN-**  
 19 **STALLMENT AGREEMENTS.**

20 (a) IN GENERAL.—

21 (1) Section 6159(a) (relating to authorization  
 22 of agreements) is amended—

23 (A) by striking “satisfy liability for pay-  
 24 ment of” and inserting “make payment on”,  
 25 and

1 (B) by inserting “full or partial” after “fa-  
 2 cilitate”.

3 (2) Section 6159(c) (relating to Secretary re-  
 4 quired to enter into installment agreements in cer-  
 5 tain cases) is amended in the matter preceding para-  
 6 graph (1) by inserting “full” before “payment”.

7 (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT  
 8 AGREEMENTS EVERY TWO YEARS.—Section 6159, as  
 9 amended by this Act, is amended by redesignating sub-  
 10 sections (d), (e), and (f) as subsections (e), (f), and (g),  
 11 respectively, and inserting after subsection (c) the fol-  
 12 lowing new subsection:

13 “(d) SECRETARY REQUIRED TO REVIEW INSTALL-  
 14 MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY  
 15 TWO YEARS.—In the case of an agreement entered into  
 16 by the Secretary under subsection (a) for partial collection  
 17 of a tax liability, the Secretary shall review the agreement  
 18 at least once every 2 years.”.

19 (c) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply to agreements entered into on or  
 21 after the date of the enactment of this Act.

22 **SEC. 485. EXTENSION OF CUSTOMS USER FEES.**

23 Section 13031(j)(3) of the Consolidated Omnibus  
 24 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3))

1 is amended by striking “March 1, 2005” and inserting  
2 “September 30, 2013”.

3 **SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**  
4 **TEREST ON POTENTIAL UNDERPAYMENTS.**

5 (a) IN GENERAL.—Subchapter A of chapter 67 (re-  
6 lating to interest on underpayments) is amended by add-  
7 ing at the end the following new section:

8 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**  
9 **TEREST ON POTENTIAL UNDERPAYMENTS,**  
10 **ETC.**

11 “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN  
12 AS PAYMENT OF TAX.—A taxpayer may make a cash de-  
13 posit with the Secretary which may be used by the Sec-  
14 retary to pay any tax imposed under subtitle A or B or  
15 chapter 41, 42, 43, or 44 which has not been assessed  
16 at the time of the deposit. Such a deposit shall be made  
17 in such manner as the Secretary shall prescribe.

18 “(b) NO INTEREST IMPOSED.—To the extent that  
19 such deposit is used by the Secretary to pay tax, for pur-  
20 poses of section 6601 (relating to interest on underpay-  
21 ments), the tax shall be treated as paid when the deposit  
22 is made.

23 “(c) RETURN OF DEPOSIT.—Except in a case where  
24 the Secretary determines that collection of tax is in jeop-  
25 ardy, the Secretary shall return to the taxpayer any

1 amount of the deposit (to the extent not used for a pay-  
2 ment of tax) which the taxpayer requests in writing.

3 “(d) PAYMENT OF INTEREST.—

4 “(1) IN GENERAL.—For purposes of section  
5 6611 (relating to interest on overpayments), a de-  
6 posit which is returned to a taxpayer shall be treated  
7 as a payment of tax for any period to the extent  
8 (and only to the extent) attributable to a disputable  
9 tax for such period. Under regulations prescribed by  
10 the Secretary, rules similar to the rules of section  
11 6611(b)(2) shall apply.

12 “(2) DISPUTABLE TAX.—

13 “(A) IN GENERAL.—For purposes of this  
14 section, the term ‘disputable tax’ means the  
15 amount of tax specified at the time of the de-  
16 posit as the taxpayer’s reasonable estimate of  
17 the maximum amount of any tax attributable to  
18 disputable items.

19 “(B) SAFE HARBOR BASED ON 30-DAY  
20 LETTER.—In the case of a taxpayer who has  
21 been issued a 30-day letter, the maximum  
22 amount of tax under subparagraph (A) shall  
23 not be less than the amount of the proposed de-  
24 ficiency specified in such letter.

1           “(3) OTHER DEFINITIONS.—For purposes of  
2 paragraph (2)—

3           “(A) DISPUTABLE ITEM.—The term ‘dis-  
4 putable item’ means any item of income, gain,  
5 loss, deduction, or credit if the taxpayer—

6           “(i) has a reasonable basis for its  
7 treatment of such item, and

8           “(ii) reasonably believes that the Sec-  
9 retary also has a reasonable basis for dis-  
10 allowing the taxpayer’s treatment of such  
11 item.

12           “(B) 30-DAY LETTER.—The term ‘30-day  
13 letter’ means the first letter of proposed defi-  
14 ciency which allows the taxpayer an opportunity  
15 for administrative review in the Internal Rev-  
16 enue Service Office of Appeals.

17           “(4) RATE OF INTEREST.—The rate of interest  
18 allowable under this subsection shall be the Federal  
19 short-term rate determined under section 6621(b),  
20 compounded daily.

21           “(e) USE OF DEPOSITS.—

22           “(1) PAYMENT OF TAX.—Except as otherwise  
23 provided by the taxpayer, deposits shall be treated  
24 as used for the payment of tax in the order depos-  
25 ited.

1           “(2) RETURNS OF DEPOSITS.—Deposits shall  
2           be treated as returned to the taxpayer on a last-in,  
3           first-out basis.”.

4           (b) CLERICAL AMENDMENT.—The table of sections  
5           for subchapter A of chapter 67 is amended by adding at  
6           the end the following new item:

“Sec. 6603. Deposits made to suspend running of interest on po-  
  tential underpayments, etc.”.

7           (c) EFFECTIVE DATE.—

8                   (1) IN GENERAL.—The amendments made by  
9           this section shall apply to deposits made after the  
10          date of the enactment of this Act.

11                   (2) COORDINATION WITH DEPOSITS MADE  
12          UNDER REVENUE PROCEDURE 84–58.—In the case of  
13          an amount held by the Secretary of the Treasury or  
14          his delegate on the date of the enactment of this Act  
15          as a deposit in the nature of a cash bond deposit  
16          pursuant to Revenue Procedure 84–58, the date that  
17          the taxpayer identifies such amount as a deposit  
18          made pursuant to section 6603 of the Internal Rev-  
19          enue Code (as added by this Act) shall be treated as  
20          the date such amount is deposited for purposes of  
21          such section 6603.

22   **SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.**

23           (a) CONTRACT REQUIREMENTS.—

1           (1) IN GENERAL.—Subchapter A of chapter 64  
2           (relating to collection) is amended by adding at the  
3           end the following new section:

4   **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

5           “(a) IN GENERAL.—Nothing in any provision of law  
6           shall be construed to prevent the Secretary from entering  
7           into a qualified tax collection contract.

8           “(b) QUALIFIED TAX COLLECTION CONTRACT.—For  
9           purposes of this section, the term ‘qualified tax collection  
10          contract’ means any contract which—

11                  “(1) is for the services of any person (other  
12                  than an officer or employee of the Treasury Depart-  
13                  ment)—

14                          “(A) to locate and contact any taxpayer  
15                          specified by the Secretary,

16                          “(B) to request full payment from such  
17                          taxpayer of an amount of Federal tax specified  
18                          by the Secretary and, if such request cannot be  
19                          met by the taxpayer, to offer the taxpayer an  
20                          installment agreement providing for full pay-  
21                          ment of such amount during a period not to ex-  
22                          ceed 3 years, and

23                          “(C) to obtain financial information speci-  
24                          fied by the Secretary with respect to such tax-  
25                          payer,



1           “(2) prohibits each person providing such serv-  
2           ices under such contract from committing any act or  
3           omission which employees of the Internal Revenue  
4           Service are prohibited from committing in the per-  
5           formance of similar services,

6           “(3) prohibits subcontractors from—

7                   “(A) having contacts with taxpayers,

8                   “(B) providing quality assurance services,

9                   and

10                   “(C) composing debt collection notices, and

11           “(4) permits subcontractors to perform other  
12           services only with the approval of the Secretary.

13           “(c) FEES AND EXPENSES.—The Secretary may re-  
14           tain and use—

15                   “(1) an amount not in excess of 25 percent of  
16           the amount collected under any qualified tax collec-  
17           tion contract for the costs of services performed  
18           under such contract, and

19                   “(2) an amount not in excess of 25 percent of  
20           such amount collected for collection enforcement ac-  
21           tivities of the Internal Revenue Service.

22           The Secretary shall keep adequate records regarding  
23           amounts so retained and used. The amount credited as  
24           paid by any taxpayer shall be determined without regard  
25           to this subsection.

1       “(d) NO FEDERAL LIABILITY.—The United States  
2 shall not be liable for any act or omission of any person  
3 performing services under a qualified tax collection con-  
4 tract.

5       “(e) APPLICATION OF FAIR DEBT COLLECTION  
6 PRACTICES ACT.—The provisions of the Fair Debt Collec-  
7 tion Practices Act (15 U.S.C. 1692 et seq.) shall apply  
8 to any qualified tax collection contract, except to the ex-  
9 tent superseded by section 6304, section 7602(c), or by  
10 any other provision of this title.

11       “(f) APPLICATION OF SECTION.—In no event may  
12 the term of any qualified tax collection contract extend  
13 beyond the date which is 5 years after the date of the  
14 enactment of this section.

15       “(g) CROSS REFERENCES.—

16               “(1) For damages for certain unauthorized col-  
17 lection actions by persons performing services under  
18 a qualified tax collection contract, see section  
19 7433A.

20               “(2) For application of Taxpayer Assistance  
21 Orders to persons performing services under a quali-  
22 fied tax collection contract, see section 7811(a)(4).”.

23       “(2) CONFORMING AMENDMENTS.—

24               “(A) Section 7809(a) is amended by insert-  
25 ing “6306,” before “7651”.

1 (B) The table of sections for subchapter A  
 2 of chapter 64 is amended by adding at the end  
 3 the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”.

4 (b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED  
 5 COLLECTION ACTIONS BY PERSONS PERFORMING SERV-  
 6 ICES UNDER QUALIFIED TAX COLLECTION CON-  
 7 TRACTS.—

8 (1) IN GENERAL.—Subchapter B of chapter 76  
 9 (relating to proceedings by taxpayers and third par-  
 10 ties) is amended by inserting after section 7433 the  
 11 following new section:

12 **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHOR-**  
 13 **IZED COLLECTION ACTIONS BY PERSONS**  
 14 **PERFORMING SERVICES UNDER QUALIFIED**  
 15 **TAX COLLECTION CONTRACTS.**

16 “(a) IN GENERAL.—Subject to the modifications pro-  
 17 vided by subsection (b), section 7433 shall apply to the  
 18 acts and omissions of any person performing services  
 19 under a qualified tax collection contract (as defined in sec-  
 20 tion 6306(b)) to the same extent and in the same manner  
 21 as if such person were an employee of the Internal Rev-  
 22 enue Service.

23 “(b) MODIFICATIONS.—For purposes of subsection  
 24 (a)—

1           “(1) Any civil action brought under section  
2           7433 by reason of this section shall be brought  
3           against the person who entered into the qualified tax  
4           collection contract with the Secretary and shall not  
5           be brought against the United States.

6           “(2) Such person and not the United States  
7           shall be liable for any damages and costs determined  
8           in such civil action.

9           “(3) Such civil action shall not be an exclusive  
10          remedy with respect to such person.

11          “(4) Subsections (c), (d)(1), and (e) of section  
12          7433 shall not apply.”.

13          (2) CLERICAL AMENDMENT.—The table of sec-  
14          tions for subchapter B of chapter 76 is amended by  
15          inserting after the item relating to section 7433 the  
16          following new item:

“Sec. 7433A. Civil damages for certain unauthorized collection ac-  
tions by persons performing services under a quali-  
fied tax collection contract.”.

17          (c) APPLICATION OF TAXPAYER ASSISTANCE OR-  
18          DERS TO PERSONS PERFORMING SERVICES UNDER A  
19          QUALIFIED TAX COLLECTION CONTRACT.—Section 7811  
20          (relating to taxpayer assistance orders) is amended by  
21          adding at the end the following new subsection:

22          “(g) APPLICATION TO PERSONS PERFORMING SERV-  
23          ICES UNDER A QUALIFIED TAX COLLECTION CON-  
24          TRACT.—Any order issued or action taken by the National

1 Taxpayer Advocate pursuant to this section shall apply to  
2 persons performing services under a qualified tax collec-  
3 tion contract (as defined in section 6306(b)) to the same  
4 extent and in the same manner as such order or action  
5 applies to the Secretary.”.

6 (d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT  
7 MISCONDUCT TO PERFORM UNDER CONTRACT.—Section  
8 1203 of the Internal Revenue Service Restructuring Act  
9 of 1998 (relating to termination of employment for mis-  
10 conduct) is amended by adding at the end the following  
11 new subsection:

12 “(e) INDIVIDUALS PERFORMING SERVICES UNDER A  
13 QUALIFIED TAX COLLECTION CONTRACT.—An individual  
14 shall cease to be permitted to perform any services under  
15 any qualified tax collection contract (as defined in section  
16 6306(b) of the Internal Revenue Code of 1986) if there  
17 is a final determination by the Secretary of the Treasury  
18 under such contract that such individual committed any  
19 act or omission described under subsection (b) in connec-  
20 tion with the performance of such services.”.

21 (e) BIENNIAL REPORT.—The Secretary of the Treas-  
22 ury shall biennially submit (beginning in 2005) to the  
23 Committee on Finance of the Senate and the Committee  
24 on Ways and Means of the House of Representatives a  
25 report with respect to qualified tax collection contracts

1 under section 6306 of the Internal Revenue Code of 1986  
2 (as added by this section) which includes—

3 (1) a complete cost benefit analysis,

4 (2) the impact of such contracts on collection  
5 enforcement staff levels in the Internal Revenue  
6 Service,

7 (3) the amounts collected and the collection  
8 costs incurred (directly and indirectly),

9 (4) an evaluation of contractor performance,

10 (5) a disclosure safeguard report in a form  
11 similar to that required under section 6103(p)(5) of  
12 such Code, and

13 (6) a measurement plan which includes a com-  
14 parison of the best practices used by the private col-  
15 lectors with the Internal Revenue Service's own col-  
16 lection techniques) and mechanisms to identify and  
17 capture information on successful collection tech-  
18 niques used by the contractors which could be adopt-  
19 ed by the Internal Revenue Service.

20 (f) EFFECTIVE DATE.—The amendments made to  
21 this section shall take effect on the date of the enactment  
22 of this Act.

1 **SEC. 488. WHISTLEBLOWER REFORMS.**

2 (a) IN GENERAL.—Section 7623 (relating to ex-  
3 penses of detection of underpayments and fraud, etc.) is  
4 amended—

5 (1) by striking “The Secretary” and inserting  
6 “(a) IN GENERAL.—The Secretary”,

7 (2) by striking “and” at the end of paragraph  
8 (1) and inserting “or”,

9 (3) by striking “(other than interest)”, and

10 (4) by adding at the end the following new sub-  
11 sections:

12 “(b) AWARDS TO WHISTLEBLOWERS.—

13 “(1) IN GENERAL.—If the Secretary proceeds  
14 with any administrative or judicial action described  
15 in subsection (a) based on information brought to  
16 the Secretary’s attention by an individual, such indi-  
17 vidual shall, subject to paragraph (2), receive as an  
18 award at least 15 percent but not more than 30 per-  
19 cent of the collected proceeds (including penalties,  
20 interest, additions to tax, and additional amounts)  
21 resulting from the action (including any related ac-  
22 tions) or from any settlement in response to such ac-  
23 tion. The determination of the amount of such  
24 award by the Whistleblower Office shall depend upon  
25 the extent to which the individual substantially con-  
26 tributed to such action.

1           “(2) AWARD IN CASE OF LESS SUBSTANTIAL  
2       CONTRIBUTION.—

3           “(A) IN GENERAL.—In the event the ac-  
4       tion described in paragraph (1) is one which the  
5       Whistleblower Office determines to be based  
6       principally on disclosures of specific allegations  
7       (other than information provided by the indi-  
8       vidual described in paragraph (1)) resulting  
9       from a judicial or administrative hearing, from  
10      a governmental report, hearing, audit, or inves-  
11      tigation, or from the news media, the Whistle-  
12      blower Office may award such sums as it con-  
13      siders appropriate, but in no case more than 10  
14      percent of the collected proceeds (including pen-  
15      alties, interest, additions to tax, and additional  
16      amounts) resulting from the action (including  
17      any related actions) or from any settlement in  
18      response to such action, taking into account the  
19      significance of the individual’s information and  
20      the role of such individual and any legal rep-  
21      resentative of such individual in contributing to  
22      such action.

23           “(B) NONAPPLICATION OF PARAGRAPH  
24      WHERE INDIVIDUAL IS ORIGINAL SOURCE OF  
25      INFORMATION.—Subparagraph (A) shall not



1           apply if the information resulting in the initi-  
2           ation of the action described in paragraph (1)  
3           was originally provided by the individual de-  
4           scribed in paragraph (1).

5           “(3) APPEAL OF AWARD DETERMINATION.—  
6           Any determination regarding an award under para-  
7           graph (1) or (2) shall be subject to the filing by the  
8           individual described in such paragraph of a petition  
9           for review with the Tax Court under rules similar to  
10          the rules under section 7463 (without regard to the  
11          amount in dispute) and such review shall be subject  
12          to the rules under section 7461(b)(1).

13          “(4) APPLICATION OF THIS SUBSECTION.—This  
14          subsection shall apply with respect to any action—

15                 “(A) against any taxpayer, but in the case  
16                 of any individual, only if such individual’s gross  
17                 income exceeds \$200,000 for any taxable year  
18                 subject to such action, and

19                 “(B) if the tax, penalties, interest, addi-  
20                 tions to tax, and additional amounts in dispute  
21                 exceed \$20,000.

22          “(5) ADDITIONAL RULES.—

23                 “(A) NO CONTRACT NECESSARY.—No con-  
24                 tract with the Internal Revenue Service is nec-

1           essary for any individual to receive an award  
2           under this subsection.

3           “(B) REPRESENTATION.—Any individual  
4           described in paragraph (1) or (2) may be rep-  
5           resented by counsel.

6           “(C) AWARD NOT SUBJECT TO INDIVIDUAL  
7           ALTERNATIVE MINIMUM TAX.—No award re-  
8           ceived under this subsection shall be included in  
9           gross income for purposes of determining alter-  
10          native minimum taxable income.

11       “(c) WHISTLEBLOWER OFFICE.—

12           “(1) IN GENERAL.—There is established in the  
13       Internal Revenue Service an office to be known as  
14       the ‘Whistleblower Office’ which—

15           “(A) shall analyze information received  
16           from any individual described in subsection (b)  
17           and either investigate the matter itself or assign  
18           it to the appropriate Internal Revenue Service  
19           office,

20           “(B) shall monitor any action taken with  
21           respect to such matter,

22           “(C) shall inform such individual that it  
23           has accepted the individual’s information for  
24           further review,

1           “(D) may require such individual and any  
2           legal representative of such individual to not  
3           disclose any information so provided,

4           “(E) may ask for additional assistance  
5           from such individual or any legal representative  
6           of such individual, and

7           “(F) shall determine the amount to be  
8           awarded to such individual under subsection  
9           (b).

10          “(2) FUNDING FOR OFFICE.—From the  
11          amounts available for expenditure under subsection  
12          (a), the Whistleblower Office shall be credited with  
13          an amount equal to the awards made under sub-  
14          section (b). These funds shall be used to maintain  
15          the Whistleblower Office and also to reimburse other  
16          Internal Revenue Service offices for related costs,  
17          such as costs of investigation and collection.

18          “(3) REQUEST FOR ASSISTANCE.—

19          “(A) IN GENERAL.—Any assistance re-  
20          quested under paragraph (1)(E) shall be under  
21          the direction and control of the Whistleblower  
22          Office or the office assigned to investigate the  
23          matter under subparagraph (A). To the extent  
24          the disclosure of any returns or return informa-  
25          tion to the individual or legal representative is

1 required for the performance of such assistance,  
2 such disclosure shall be pursuant to a contract  
3 entered into between the Secretary and the re-  
4 cipients of such disclosure subject to section  
5 6103(n).

6 “(B) FUNDING OF ASSISTANCE.—From  
7 the funds made available to the Whistleblower  
8 Office under paragraph (2), the Whistleblower  
9 Office may reimburse the costs incurred by any  
10 legal representative in providing assistance de-  
11 scribed in subparagraph (A).”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to information provided on or after  
14 the date of the enactment of this Act.

15 **SEC. 489. PROTECTION OF OVERTIME PAY.**

16 Section 13 of the Fair Labor Standards Act of 1938  
17 (29 U.S.C. 213) is amended by adding at the end the fol-  
18 lowing:

19 “(k)(1) The Secretary shall not promulgate any rule  
20 under subsection (a)(1) that exempts from the overtime  
21 pay provisions of section 7 any employee who earns less  
22 than \$23,660 per year.

23 “(2) The Secretary shall not promulgate any rule  
24 under subsection (a)(1) concerning the right to overtime  
25 pay that is not as protective, or more protective, of the

1 overtime pay rights of employees in the occupations or job  
2 classifications described in paragraph (3) as the protec-  
3 tions provided for such employees under the regulations  
4 in effect under such subsection on March 31, 2003.

5 “(3) The occupations or job classifications described  
6 in this paragraph are as follows:

7 “(A) Any worker paid on an hourly basis.

8 “(B) Blue collar workers.

9 “(C) Any worker provided overtime under a col-  
10 lective bargaining agreement.

11 “(D) Team leaders.

12 “(E) Computer programmers.

13 “(F) Registered nurses.

14 “(G) Licensed practical nurses.

15 “(H) Nurse midwives.

16 “(I) Nursery school teachers.

17 “(J) Oil and gas pipeline workers.

18 “(K) Oil and gas field workers.

19 “(L) Oil and gas platform workers.

20 “(M) Refinery workers.

21 “(N) Steel workers.

22 “(O) Shipyard and ship scrapping workers.

23 “(P) Teachers.

24 “(Q) Technicians.

25 “(R) Journalists.

- 1           “(S) Chefs.
- 2           “(T) Cooks.
- 3           “(U) Police officers.
- 4           “(V) Firefighters.
- 5           “(W) Fire sergeants.
- 6           “(X) Police sergeants.
- 7           “(Y) Emergency medical technicians.
- 8           “(Z) Paramedics.
- 9           “(AA) Waste disposal workers.
- 10          “(BB) Day care workers.
- 11          “(CC) Maintenance employees.
- 12          “(DD) Production line employees.
- 13          “(EE) Construction employees.
- 14          “(FF) Carpenters.
- 15          “(GG) Mechanics.
- 16          “(HH) Plumbers.
- 17          “(II) Iron workers.
- 18          “(JJ) Craftsmen.
- 19          “(KK) Operating engineers.
- 20          “(LL) Laborers.
- 21          “(MM) Painters.
- 22          “(NN) Cement masons.
- 23          “(OO) Stone and brick masons.
- 24          “(PP) Sheet metal workers.
- 25          “(QQ) Utility workers.

1 “(RR) Longshoremen.

2 “(SS) Stationary engineers.

3 “(TT) Welders.

4 “(UU) Boilermakers.

5 “(VV) Funeral directors.

6 “(WW) Athletic trainers.

7 “(XX) Outside sales employees.

8 “(YY) Inside sales employees.

9 “(ZZ) Grocery store managers.

10 “(AAA) Financial services industry workers.

11 “(BBB) Route drivers.

12 “(CCC) Assistant retail managers.

13 “(4) Any portion of a rule promulgated under sub-  
 14 section (a)(1) after March 31, 2003, that modifies the  
 15 overtime pay provisions of section 7 in a manner that is  
 16 inconsistent with paragraphs (2) and (3) shall have no  
 17 force or effect as it relates to the occupation or job classi-  
 18 fication involved.”.

19 **SEC. 490. PROTECTION OF OVERTIME PAY.**

20 Section 13 of the Fair Labor Standards Act of 1938  
 21 (29 U.S.C. 213) is amended by adding at the end the fol-  
 22 lowing:

23 “(k) Notwithstanding the provisions of subchapter II  
 24 of chapter 5 and chapter 7 of title 5, United States Code  
 25 (commonly referred to as the Administrative Procedures

1 Act) or any other provision of law, any portion of the final  
 2 rule promulgated on April 23, 2004, revising part 541 of  
 3 title 29, Code of Federal Regulations, that exempts from  
 4 the overtime pay provisions of section 7 any employee who  
 5 would not otherwise be exempt if the regulations in effect  
 6 on March 31, 2003 remained in effect, shall have no force  
 7 or effect and that portion of such regulations (as in effect  
 8 on March 31, 2003) that would prevent such employee  
 9 from being exempt shall remain in effect. Notwithstanding  
 10 the preceding sentence, the increased salary requirements  
 11 provided for in such final rule at section 541.600 of such  
 12 title 29, shall remain in effect.”.

### 13 **PART V—MISCELLANEOUS PROVISIONS**

#### 14 **SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A** 15 **TO LIST OF TAXABLE VACCINES.**

16 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-  
 17 able vaccine) is amended by redesignating subparagraphs  
 18 (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and  
 19 (M), respectively, and by inserting after subparagraph (H)  
 20 the following new subparagraph:

21 “(I) Any vaccine against hepatitis A.”.

22 (b) CONFORMING AMENDMENT.—Section  
 23 9510(c)(1)(A) is amended by striking “October 18, 2000”  
 24 and inserting “the date of the enactment of the Jumpstart  
 25 Our Business Strength (JOBS) Act”.



1 (c) EFFECTIVE DATE.—

2 (1) SALES, ETC.—The amendments made by  
3 this section shall apply to sales and uses on or after  
4 the first day of the first month which begins more  
5 than 4 weeks after the date of the enactment of this  
6 Act.

7 (2) DELIVERIES.—For purposes of paragraph  
8 (1) and section 4131 of the Internal Revenue Code  
9 of 1986, in the case of sales on or before the effec-  
10 tive date described in such paragraph for which de-  
11 livery is made after such date, the delivery date shall  
12 be considered the sale date.

13 **SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A**  
14 **PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-**  
15 **KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

16 (a) IN GENERAL.—Section 121(d) (relating to special  
17 rules for exclusion of gain from sale of principal residence)  
18 is amended by adding at the end the following new para-  
19 graph:

20 “(10) PROPERTY ACQUIRED IN LIKE-KIND EX-  
21 CHANGE.—If a taxpayer acquired property in an ex-  
22 change to which section 1031 applied, subsection (a)  
23 shall not apply to the sale or exchange of such prop-  
24 erty if it occurs during the 5-year period beginning  
25 with the date of the acquisition of such property.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to sales or exchanges after the date  
 3 of the enactment of this Act.

4 **SEC. 493. MODIFICATION OF EXEMPTION FROM TAX FOR**  
 5 **SMALL PROPERTY AND CASUALTY INSUR-**  
 6 **ANCE COMPANIES.**

7 (a) PREMIUMS AS PERCENTAGE OF GROSS RECEIPTS  
 8 INCREASED.—Section 501(c)(15)(A)(i)(II) is amended by  
 9 striking “50 percent” and inserting “60 percent”.

10 (b) LIMITATION ON NET WRITTEN PREMIUMS IN-  
 11 CREASED.—Section 831(b)(2) (relating to companies to  
 12 which this subsection applies) is amended—

13 (1) by striking “\$1,200,000” and inserting  
 14 “\$1,890,000”, and

15 (2) by adding at the end the following new sub-  
 16 paragraph:

17 “(C) INFLATION ADJUSTMENTS.—

18 “(i) IN GENERAL.—In the case of any  
 19 taxable year beginning in a calendar year  
 20 after 2005, the dollar amount in subpara-  
 21 graph (A)(i) shall be increased by an  
 22 amount equal to—

23 “(I) such dollar amount, multi-  
 24 plied by

1                   “(II) the cost-of-living adjust-  
2                   ment determined under section 1(f)(3)  
3                   for the calendar year in which the tax-  
4                   able year begins, by substituting ‘cal-  
5                   endar year 2004’ for ‘calendar year  
6                   1992’ in subparagraph (B) thereof.

7                   “(ii) ROUNDING.—If the amount in  
8                   subparagraph (A)(i) as increased under  
9                   clause (i) is not a multiple of \$10,000,  
10                  such amount shall be rounded to the near-  
11                  est multiple of \$10,000.”.

12                  (c) EFFECTIVE DATE.—

13                  (1) IN GENERAL.—Except as provided in para-  
14                  graph (2), the amendments made by this section  
15                  shall apply to taxable years beginning after Decem-  
16                  ber 31, 2004.

17                  (2) TRANSITION RULE FOR COMPANIES IN RE-  
18                  CEIVERSHIP OR LIQUIDATION.—In the case of a  
19                  company or association which—

20                        (A) for the taxable year which includes  
21                        April 1, 2004, meets the requirements of sec-  
22                        tion 501(c)(15)(A) of the Internal Revenue  
23                        Code of 1986, as in effect for the last taxable  
24                        year beginning before January 1, 2004, and

1 (B) on April 1, 2004, is in a receivership,  
2 liquidation, or similar proceeding under the su-  
3 pervision of a State court,  
4 the amendments made by this section shall apply to  
5 taxable years beginning after the earlier of the date  
6 such proceeding ends (or, if later, December 31,  
7 2004) or December 31, 2007.

8 **SEC. 494. TREATMENT OF CHARITABLE CONTRIBUTIONS OF**  
9 **PATENTS AND SIMILAR PROPERTY.**

10 (a) IN GENERAL.—Section 170(e)(1)(B) (relating to  
11 certain contributions of ordinary income and capital gain  
12 property) is amended by striking “or” at the end of clause  
13 (i), by adding “or” at the end of clause (ii), and by insert-  
14 ing after clause (ii) the following new clause:

15 “(iii) of any patent, copyright, trade-  
16 mark, trade name, trade secret, know-how,  
17 software (other than software described in  
18 section 197(e)(3)(A)(i)), or similar prop-  
19 erty, or applications or registrations of  
20 such property,”.

21 (b) ADDITIONAL DEDUCTION FOR CERTAIN CON-  
22 TRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—Sec-  
23 tion 170(e) is amended by adding at the end the following  
24 new paragraph:

1           “(7) ADDITIONAL DEDUCTION FOR CERTAIN  
2       CONTRIBUTIONS OF PATENTS AND SIMILAR PROP-  
3       ERTY.—

4           “(A) IN GENERAL.—In the case of a chari-  
5       table contribution of any property described in  
6       paragraph (1)(B)(iii) (other than copyrights de-  
7       scribed in section 1221(a)(3) or 1231(b)(1)(C)  
8       or property contributed to or for the use of an  
9       organization described in paragraph (1)(B)(ii)),  
10      if—

11           “(i) the lesser of—

12           “(I) 5 percent of the fair market  
13       value of such property (determined at  
14       the time of such contribution), or

15           “(II) \$1,000,000, exceeds

16           “(ii) the amount of such contribution  
17       as determined under paragraph (1),  
18       then the amount of the charitable contribution  
19       of such property otherwise taken into account  
20       under this section shall equal the amount deter-  
21       mined under clause (i).”.

22       (c) CERTAIN DONEE INCOME FROM INTELLECTUAL  
23       PROPERTY TREATED AS AN ADDITIONAL CHARITABLE  
24       CONTRIBUTION.—Section 170 is amended by redesign-

1 nating subsection (m) as subsection (n) and by inserting  
 2 after subsection (l) the following new subsection:

3 “(m) CERTAIN DONEE INCOME FROM INTELLEC-  
 4 TUAL PROPERTY TREATED AS AN ADDITIONAL CHARI-  
 5 TABLE CONTRIBUTION.—

6 “(1) TREATMENT AS ADDITIONAL CONTRIBU-  
 7 TION.—In the case of a taxpayer who makes a quali-  
 8 fied intellectual property contribution, the deduction  
 9 allowed under subsection (a) for each taxable year of  
 10 the taxpayer ending on or after the date of such con-  
 11 tribution shall be increased (subject to the limita-  
 12 tions under subsection (b)) by the applicable per-  
 13 centage of qualified donee income with respect to  
 14 such contribution which is properly allocable to such  
 15 year under this subsection.

16 “(2) QUALIFIED DONEE INCOME.—For pur-  
 17 poses of this subsection, the term ‘qualified donee  
 18 income’ means any net income received by or ac-  
 19 crued to the donee which is properly allocable to the  
 20 qualified intellectual property.

21 “(3) ALLOCATION OF QUALIFIED DONEE IN-  
 22 COME TO TAXABLE YEARS OF DONOR.—For pur-  
 23 poses of this subsection, qualified donee income shall  
 24 be treated as properly allocable to a taxable year of  
 25 the donor if such income is received by or accrued

1 to the donee for the taxable year of the donee which  
 2 ends within or with such taxable year of the donor.

3 “(4) 10-YEAR LIMITATION.—Income shall not  
 4 be treated as properly allocable to qualified intellec-  
 5 tual property for purposes of this subsection if such  
 6 income is received by or accrued to the donee after  
 7 the 10-year period beginning on the date of the con-  
 8 tribution of such property.

9 “(5) BENEFIT LIMITED TO LIFE OF INTELLEC-  
 10 TUAL PROPERTY.—Income shall not be treated as  
 11 properly allocable to qualified intellectual property  
 12 for purposes of this subsection if such income is re-  
 13 ceived by or accrued to the donee after the expira-  
 14 tion of the legal life of such property.

15 “(6) APPLICABLE PERCENTAGE.—For purposes  
 16 of this subsection, the term ‘applicable percentage’  
 17 means the percentage determined under the fol-  
 18 lowing table which corresponds to a taxable year of  
 19 the donor ending on or after the date of the quali-  
 20 fied intellectual property contribution:

**“Taxable Year of Donor End-   Applicable Percentage:  
 ing On or After Date of  
 Contribution:**

|                 |     |
|-----------------|-----|
| 1st or 2d ..... | 100 |
| 3rd .....       | 90  |
| 4th .....       | 80  |
| 5th .....       | 70  |
| 6th .....       | 60  |
| 7th .....       | 50  |
| 8th .....       | 40  |
| 9th .....       | 30  |

**“Taxable Year of Donor Ending On or After Date of Contribution:      Applicable Percentage:**

|                    |     |
|--------------------|-----|
| 10th .....         | 20  |
| 11th or 12th ..... | 10. |

1           “(7) QUALIFIED INTELLECTUAL PROPERTY  
2           CONTRIBUTION.—For purposes of this subsection,  
3           the term ‘qualified intellectual property contribution’  
4           means any charitable contribution of qualified intel-  
5           lectual property—

6                   “(A) the amount of which taken into ac-  
7                   count under this section—

8                           “(i) is reduced by reason of subsection  
9                           (e)(1), or

10                           “(ii) determined under subsection  
11                           (e)(7), and

12                           “(B) with respect to which the donor in-  
13                           forms the donee at the time of such contribu-  
14                           tion that the donor intends to treat such con-  
15                           tribution as a qualified intellectual property  
16                           contribution for purposes of this subsection and  
17                           section 6050L.

18           “(8) QUALIFIED INTELLECTUAL PROPERTY.—  
19           For purposes of this subsection, the term ‘qualified  
20           intellectual property’ means property described in  
21           subsection (e)(1)(B)(iii) (other than copyrights de-  
22           scribed in section 1221(a)(3) or 1231(b)(1)(C) or



1 property contributed to or for the use of an organi-  
2 zation described in subsection (e)(1)(B)(ii)).

3 “(9) OTHER SPECIAL RULES.—

4 “(A) APPLICATION OF LIMITATIONS ON  
5 CHARITABLE CONTRIBUTIONS.—Any increase  
6 under this subsection of the deduction provided  
7 under subparagraph (a) shall be treated for  
8 purposes of subsection (b) as a deduction which  
9 is attributable to a charitable contribution to  
10 the donee to which such increase relates.

11 “(B) NET INCOME DETERMINED BY  
12 DONEE.—The net income taken into account  
13 under paragraph (2) shall not exceed the  
14 amount of such income reported under section  
15 6050L(b)(1).

16 “(C) DEDUCTION LIMITED TO 12 TAXABLE  
17 YEARS.—Except as may be provided under sub-  
18 paragraph (D)(i), this subsection shall not  
19 apply with respect to any qualified intellectual  
20 property contribution for any taxable year of  
21 the donor after the 12th taxable year of the  
22 donor which ends on or after the date of such  
23 contribution.

24 “(D) REGULATIONS.—The Secretary may  
25 issue regulations or other guidance to carry out

1 the purposes of this subsection, including regu-  
 2 lations or guidance—

3 “(i) modifying the application of this  
 4 subsection in the case of a donor or donee  
 5 with a short taxable year, and

6 “(ii) providing for the determination  
 7 of an amount to be treated as net income  
 8 of the donee which is properly allocable to  
 9 qualified intellectual property in the case  
 10 of a donee who uses such property to fur-  
 11 ther a purpose or function constituting the  
 12 basis of the donee’s exemption under sec-  
 13 tion 501 (or, in the case of a governmental  
 14 unit, any purpose described in section  
 15 170(c)) and does not possess a right to re-  
 16 ceive any payment from a third party with  
 17 respect to such property.”.

18 (d) REPORTING REQUIREMENTS.—Section 6050L  
 19 (relating to returns relating to certain dispositions of do-  
 20 nated property) is amended to read as follows:

21 **“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED**  
 22 **PROPERTY.**

23 “(a) DISPOSITIONS OF DONATED PROPERTY.—

24 “(1) IN GENERAL.—If the donee of any chari-  
 25 table deduction property sells, exchanges, or other-

1 wise disposes of such property within 2 years after  
 2 its receipt, the donee shall make a return (in accord-  
 3 ance with forms and regulations prescribed by the  
 4 Secretary) showing—

5 “(A) the name, address, and TIN of the  
 6 donor,

7 “(B) a description of the property,

8 “(C) the date of the contribution,

9 “(D) the amount received on the disposi-  
 10 tion, and

11 “(E) the date of such disposition.

12 “(2) DEFINITIONS.—For purposes of this sub-  
 13 section—

14 “(A) CHARITABLE DEDUCTION PROP-  
 15 erty.—The term ‘charitable deduction prop-  
 16 erty’ means any property (other than publicly  
 17 traded securities) contributed in a contribution  
 18 for which a deduction was claimed under sec-  
 19 tion 170 if the claimed value of such property  
 20 (plus the claimed value of all similar items of  
 21 property donated by the donor to 1 or more  
 22 donees) exceeds \$5,000.

23 “(B) PUBLICLY TRADED SECURITIES.—  
 24 The term ‘publicly traded securities’ means se-  
 25 curities for which (as of the date of the con-

1           tribution) market quotations are readily avail-  
2           able on an established securities market.

3           “(b) QUALIFIED INTELLECTUAL PROPERTY CON-  
4    TRIBUTIONS.—

5           “(1) IN GENERAL.—Each donee with respect to  
6           a qualified intellectual property contribution shall  
7           make a return (at such time and in such form and  
8           manner as the Secretary may by regulations pre-  
9           scribe) with respect to each specified taxable year of  
10          the donee showing—

11               “(A) the name, address, and TIN of the  
12          donor,

13               “(B) a description of the qualified intellec-  
14          tual property contributed,

15               “(C) the date of the contribution, and

16               “(D) the amount of net income of the  
17          donee for the taxable year which is properly al-  
18          locable to the qualified intellectual property (de-  
19          termined without regard to paragraph (9)(B) of  
20          section 170(m) and with the modifications de-  
21          scribed in paragraphs (4) and (5) of such sec-  
22          tion).

23           “(2) DEFINITIONS.—For purposes of this sub-  
24          section—

1           “(A) IN GENERAL.—Terms used in this  
 2           subsection which are also used in section  
 3           170(m) have the respective meanings given  
 4           such terms in such section.

5           “(B) SPECIFIED TAXABLE YEAR.—The  
 6           term ‘specified taxable year’ means, with re-  
 7           spect to any qualified intellectual property con-  
 8           tribution, any taxable year of the donee any  
 9           portion of which is part of the 10-year period  
 10          beginning on the date of such contribution.

11          “(c) STATEMENT TO BE FURNISHED TO DONORS.—  
 12          Every person making a return under subsection (a) or (b)  
 13          shall furnish a copy of such return to the donor at such  
 14          time and in such manner as the Secretary may by regula-  
 15          tions prescribe.”.

16          (e) PROCESSING FEE.—Section 170, as amended by  
 17          subsection (b), is amended by redesignating subsection (n)  
 18          as subsection (o) and by inserting after subsection (m) the  
 19          following new subsection:

20          “(n) PROCESSING FEE.—In the case of a deduction  
 21          allowed for any taxable year under this section with re-  
 22          spect to a charitable contribution of any property de-  
 23          scribed in subsection (e)(1)(B)(iii) (other than copyrights  
 24          described in section 1221(a)(3) or 1231(b)(1)(C) or prop-  
 25          erty contributed to or for the use of an organization de-

1 scribed in subsection (e)(1)(B)(ii)), the taxpayer shall in-  
 2 clude, with the taxpayer's return of tax including such de-  
 3 duction, a fee equal to 1 percent of the amount of such  
 4 deduction. Such fee shall be credited by the Secretary to  
 5 the operations of the Exempt Organizations unit within  
 6 the Internal Revenue Service.”.

7 (f) MODIFICATION OF SUBSTANTIAL VALUATIONS  
 8 MISSTATEMENT PENALTY FOR CHARITABLE CONTRIBU-  
 9 TIONS OF PROPERTY.—

10 (1) SUBSTANTIAL MISSTATEMENTS.—Section  
 11 6662(e)(1)(A) (relating to substantial valuation  
 12 misstatements under chapter 1) is amended by in-  
 13 serting “(50 percent or more in the case of a chari-  
 14 table contribution of any property described in sec-  
 15 tion 170(e)(1)(B)(iii))” after “200 percent or  
 16 more”.

17 (2) GROSS MISSTATEMENTS.—Section  
 18 6662(h)(2)(A) (defining gross valuation  
 19 misstatements) is amended by striking clause (ii)  
 20 and inserting the following new clauses:

21 “(ii) ‘100 percent or more’ for ‘50  
 22 percent or more’,

23 “(iii) ‘25 percent or less’ for ‘50 per-  
 24 cent or less’, and”.

1       (g) ANTI-ABUSE RULES.—The Secretary of the  
2 Treasury—

3           (1) may prescribe such regulations or other  
4 guidance as may be necessary or appropriate to pre-  
5 vent the avoidance of the purposes of paragraphs  
6 (1)(B)(iii) and (7) of section 170(e) of the Internal  
7 Revenue Code of 1986 (as added by subsections (a)  
8 and (b)), including preventing—

9           (A) the circumvention of the reduction of  
10 the charitable deduction by embedding or bun-  
11 dling the patent or similar property as part of  
12 a charitable contribution of property that in-  
13 cludes the patent or similar property,

14           (B) the manipulation of the basis of the  
15 property to increase the amount of the chari-  
16 table deduction through the use of related per-  
17 sons, pass-thru entities, or other intermediaries,  
18 or through the use of any provision of law or  
19 regulation (including the consolidated return  
20 regulations), and

21           (C) a donor from changing the form of the  
22 patent or similar property to property of a form  
23 for which different deduction rules would apply,  
24 and

1           (2) shall prescribe guidance on appraisal stand-  
 2           ards for contributions of property described in sec-  
 3           tion 170(e)(1)(B)(iii) of the Internal Revenue Code  
 4           of 1986 (as added by this section).

5           (h) EFFECTIVE DATE.—The amendments made by  
 6           this section shall apply to contributions made after the  
 7           date of the enactment of this Act.

8   **SEC. 495. INCREASE IN AGE OF MINOR CHILDREN WHOSE**  
 9                   **UNEARNED INCOME IS TAXED AS IF PAR-**  
 10                   **ENT'S INCOME.**

11          (a) IN GENERAL.—Section 1(g)(2)(A) (relating to  
 12          child to whom subsection applies) is amended by striking  
 13          “age 14” and inserting “age 18”.

14          (b) EFFECTIVE DATE.—The amendment made by  
 15          this section shall apply to taxable years beginning after  
 16          December 31, 2003.

17   **SEC. 496. HOLDING PERIOD FOR PREFERRED STOCK.**

18          (a) IN GENERAL.—Section 1(h)(11)(B)(iii)(I) is  
 19          amended to read as follows:

20                                   “(I) with respect to which the  
 21                                   holding period requirements of section  
 22                                   246(c) are not met, determined by  
 23                                   substituting ‘60 days’ for ‘45’ days  
 24                                   each place it appears, by substituting  
 25                                   ‘120-day’ for ‘90-day’ each place it



1 appears, and by substituting ‘120  
 2 days’ for ‘90 days’ and ‘240-day’ for  
 3 ‘180-day’ in paragraph (2).”

4 (b) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to taxable years beginning after  
 6 the date of the enactment of this Act.

7 **SEC. 497. SUBSTANTIAL PRESENCE TEST REQUIRED TO DE-**  
 8 **TERMINE BONA FIDE RESIDENCE IN UNITED**  
 9 **STATES POSSESSIONS.**

10 (a) SUBSTANTIAL PRESENCE TEST.—

11 (1) IN GENERAL.—Subpart D of part III of  
 12 subchapter N of chapter 1 (relating to possessions of  
 13 the United States) is amended by adding at the end  
 14 the following new section:

15 **“SEC. 937. BONA FIDE RESIDENT.**

16 “For purposes of this subpart, section 865(g)(3), sec-  
 17 tion 876, section 881(b), paragraphs (2) and (3) of section  
 18 901(b), section 957(c), section 3401(a)(8)(C), and section  
 19 7654(a), the term ‘bona fide resident’ means a person who  
 20 satisfies a test, determined by the Secretary, similar to  
 21 the substantial presence test under section 7701(b)(3)  
 22 with respect to Guam, American Samoa, the Northern  
 23 Mariana Islands, Puerto Rico, or the Virgin Islands, as  
 24 the case may be.”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) The following provisions are amended  
 2 by striking “during the entire taxable year” and  
 3 inserting “for the taxable year”:

4 (i) Paragraph (3) of section 865(g).

5 (ii) Subsection (a) of section 876(a).

6 (iii) Paragraphs (2) and (3) of section  
 7 901(b).

8 (iv) Subsection (a) of section 931.

9 (v) Paragraphs (1) and (2) of section  
 10 933.

11 (B) Section 931(d) is amended by striking  
 12 paragraph (3).

13 (C) Section 932 is amended by striking “at  
 14 the close of the taxable year” and inserting “for  
 15 the taxable year” each place it appears.

16 (3) CLERICAL AMENDMENT.—The table of sec-  
 17 tions of subpart D of part III of subchapter N of  
 18 chapter 1 is amended by adding at the end the fol-  
 19 lowing new item:

“Sec. 937. Bona fide resident.”.

20 (b) REPORTING REQUIREMENTS FOR BONA FIDE  
 21 RESIDENTS OF THE VIRGIN ISLANDS.—Paragraph (2) of  
 22 section 932(c) (relating to treatment of Virgin Islands  
 23 residents) is amended to read as follows:

24 “(2) FILING REQUIREMENTS.—

1           “(A) IN GENERAL.—Notwithstanding para-  
 2           graph (4), each individual to whom this sub-  
 3           section applies for the taxable year shall file an  
 4           income tax return for the taxable year with—

5                       “(i) the Virgin Islands, and

6                       “(ii) the United States.

7           “(B) FILING FEE.—The Secretary shall  
 8           charge a processing fee with respect to the re-  
 9           turn filed under subparagraph (A)(ii) of an  
 10          amount appropriate to cover the administrative  
 11          costs of the requirements of subparagraph  
 12          (A)(ii) and the enforcement of the purposes of  
 13          subparagraph (A)(ii).”.

14          (c) PENALTIES.—

15               (1) IN GENERAL.—Part I of subchapter B of  
 16          chapter 68 is amended by adding at the end the fol-  
 17          lowing new section:

18       **“SEC. 6717. FAILURE OF VIRGIN ISLANDS RESIDENTS TO**

19                       **FILE RETURNS WITH THE UNITED STATES.**

20               “(a) PENALTY AUTHORIZED.—The Secretary may  
 21          impose a civil money penalty on any person who violates,  
 22          or causes any violation of, the requirements of section  
 23          932(c)(2)(A)(ii).

24               “(b) AMOUNT OF PENALTY.—

1           “(1) IN GENERAL.—Except as provided in sub-  
2           section (c), the amount of any civil penalty imposed  
3           under subsection (a) shall not exceed \$5,000.

4           “(2) REASONABLE CAUSE EXCEPTION.—No  
5           penalty shall be imposed under subsection (a) with  
6           respect to any violation if such violation was due to  
7           reasonable cause and the taxpayer acted in good  
8           faith.

9           “(c) WILLFUL VIOLATIONS.—In the case of any per-  
10          son willfully violating, or willfully causing any violation of,  
11          any requirement of section 932(c)(2)(A)(ii)—

12           “(1) the maximum penalty under subsection  
13          (b)(1) shall be increased to \$25,000 and

14           “(2) subsection (b)(2) shall not apply.”.

15           “(2) CLERICAL AMENDMENT.—The table of sec-  
16          tions for Part I of subchapter B of chapter 68 is  
17          amended by adding at the end the following new  
18          item:

                    “Sec. 6717. Failure of Virgin Islands residents to file returns  
                                    with the United States.”.

19           “(d) EFFECTIVE DATE.—The amendments made by  
20          this section shall apply to taxable years ending after the  
21          date of the enactment of this Act.

1 **TITLE V—PROTECTION OF**  
2 **UNITED STATES WORKERS**  
3 **FROM COMPETITION OF FOR-**  
4 **EIGN WORKFORCES**

5 **SEC. 501. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**  
6 **CONTRACTS.**

7 (a) LIMITATIONS.—

8 (1) IN GENERAL.—The Office of Federal Pro-  
9 curement Policy Act (41 U.S.C. 403 et seq.) is  
10 amended by adding at the end the following new sec-  
11 tion:

12 **“SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**  
13 **CONTRACTS.**

14 “(a) CONVERSIONS TO CONTRACTOR PERFORMANCE  
15 OF FEDERAL ACTIVITIES.—An activity or function of an  
16 executive agency that is converted to contractor perform-  
17 ance under Office of Management and Budget Circular  
18 A–76 may not be performed by the contractor or any sub-  
19 contractor at a location outside the United States except  
20 to the extent that such activity or function was previously  
21 performed by Federal Government employees outside the  
22 United States.

23 “(b) OTHER FEDERAL CONTRACTS.—(1) A contract  
24 that is entered into by the head of an executive agency  
25 may not be performed outside the United States except

1 to meet a requirement of the executive agency for the con-  
2 tract to be performed specifically at a location outside the  
3 United States.

4 “(2) The prohibition in paragraph (1) does not apply  
5 in the case of a contract of an executive agency if—

6 “(A) the President determines in writing that it  
7 is necessary in the national security interests of the  
8 United States for the contract to be performed out-  
9 side the United States; or

10 “(B) the head of such executive agency makes  
11 a determination and reports such determination on  
12 a timely basis to the Director of the Office of Man-  
13 agement and Budget that—

14 “(i) the property or services needed by the  
15 executive agency are available only by means of  
16 performance of the contract outside the United  
17 States; and

18 “(ii) no property or services available by  
19 means of performance of the contract inside the  
20 United States would satisfy the executive agen-  
21 cy’s need.

22 “(3) Paragraph (1) does not apply to the perform-  
23 ance of a contract outside the United States under the  
24 exception provided in subsection (a).

1       “(c) STATE CONTRACTS.—(1) Except as provided in  
2 paragraph (2), funds appropriated for financial assistance  
3 for a State may not be disbursed to or for such State dur-  
4 ing a fiscal year unless the chief executive of that State  
5 has transmitted to the Administrator for Federal Procure-  
6 ment Policy, not later than April 1 of the preceding fiscal  
7 year, a written certification that none of such funds will  
8 be expended for the performance outside the United States  
9 of contracts entered into by such State.

10       “(2) The prohibition on disbursement of funds to or  
11 for a State under paragraph (1) does not apply with re-  
12 spect to the performance of a State contract outside the  
13 United States if—

14               “(A) the chief executive of such State—

15                       “(i) determines that the property or serv-  
16 ices needed by the State are available only by  
17 means of performance of the contract outside  
18 the United States and no property or services  
19 available by means of performance of the con-  
20 tract inside the United States would satisfy the  
21 State’s need; and

22                       “(ii) transmits a notification of such deter-  
23 mination to the head of the executive agency of  
24 the United States that administers the author-

1           ity under which such funds are disbursed to or  
2           for the State; and

3           “(B) the head of the executive agency receiving  
4           the notification of such determination—

5                   “(i) confirms that the facts warrant the  
6           determination;

7                   “(ii) approves the determination; and

8                   “(iii) transmits a notification of the ap-  
9           proval of the determination to the Director of  
10          the Office of Management and Budget.

11          “(3) In this subsection, the term ‘State’ means each  
12       of the several States of the United States, the District  
13       of Columbia, the Commonwealth of Puerto Rico, the Com-  
14       monwealth of the Northern Mariana Islands, the Virgin  
15       Islands, Guam, American Samoa, and the Trust Territory  
16       of the Pacific Islands.

17          “(d) Subsections (b) and (c) shall not apply to pro-  
18       curement covered by the World Trade Organization Gov-  
19       ernment Procurement Agreement.

20          “(e) NATIONAL SECURITY EXEMPTION.—Subsection  
21       (b) shall not apply to any procurement for national secu-  
22       rity purposes entered into by—

23                   “(1) the Department of Defense or any agency  
24           or entity thereof;



1           “(2) the Department of the Army, the Depart-  
2           ment of the Navy, the Department of the Air Force,  
3           or any agency or entity of any of the military de-  
4           partments;

5           “(3) the Department of Homeland Security;

6           “(4) the Department of Energy or any agency  
7           or entity thereof, with respect to the national secu-  
8           rity programs of that Department; or

9           “(5) any element of the intelligence community.

10          “(f) RESPONSIBILITIES OF OMB.—The Director of  
11          the Office of Management and Budget shall—

12               “(1) maintain—

13                       “(A) the waivers granted under subsection  
14                       (b)(2), together with the determinations and  
15                       certifications on which such waivers were based;  
16                       and

17                       “(B) the notifications received under sub-  
18                       section (c)(2)(B)(iii); and

19               “(2) submit to Congress promptly after the end  
20               of each quarter of each fiscal year a report that sets  
21               forth—

22                       “(A) the waivers that were granted under  
23                       subsection (b)(2) during such quarter; and

1           “(B) the notifications that were received  
2           under subsection (c)(2)(B)(iii) during such  
3           quarter.

4           “(g) ANNUAL GAO REVIEW.—The Comptroller Gen-  
5           eral shall—

6           “(1) review, each fiscal year, the waivers grant-  
7           ed during such fiscal year under subsection (b)(2)  
8           and the disbursements of funds authorized pursuant  
9           to the exceptions in subsections (c)(2) and (e); and  
10          “(2) promptly after the end of such fiscal year,  
11          transmit to Congress a report containing a list of  
12          the contracts covered by such waivers and exception  
13          together with a brief description of the performance  
14          of each such contract to the maximum extent fea-  
15          sible outside the United States.”.

16          (2) CLERICAL AMENDMENT.—The table of sec-  
17          tions in section 1(b) of such Act is amended by add-  
18          ing at the end the following new item:

“Sec. 42. Limitations on off-shore performance of contracts.”.

19          (b) INAPPLICABILITY TO STATES DURING FIRST  
20          TWO FISCAL YEARS.—Section 42(c) of the Office of Fed-  
21          eral Procurement Policy Act (as added by subsection (a))  
22          shall not apply to disbursements of funds to a State dur-  
23          ing the fiscal year in which this Act is enacted and the  
24          next fiscal year.

1 **SEC. 502. REPEAL OF SUPERSEDED LAW.**

2 Section 647 of the Transportation, Treasury, and  
3 Independent Agencies Appropriations Act, 2004 (division  
4 F of Public Law 108–199) is amended by striking sub-  
5 section (e).

6 **SEC. 503. EFFECTIVE DATE AND APPLICABILITY.**

7 (a) IN GENERAL.—This title and the amendments  
8 made by this title shall take effect 30 days after the Sec-  
9 retary of Commerce certifies that the amendments made  
10 by this title will not result in the loss of more jobs than  
11 it will protect and will not cause harm to the United States  
12 economy. The initial certification shall be made by the  
13 Secretary of Commerce no later than 90 days after the  
14 enactment of this Act. Such certification must be renewed  
15 on or before January 1 of each year in order for the  
16 amendments made by this title to be in effect for that  
17 year.

18 (b) CONSISTENCY WITH INTERNATIONAL AGREE-  
19 MENTS.—The provisions of this title shall not apply to the  
20 extent that they may be inconsistent with obligations  
21 under international agreements. Within 90 days of this  
22 legislation, the Office of Management and Budget, in con-  
23 sultation with the Office of the United States Trade Rep-  
24 resentative, shall develop guidelines for the implementa-  
25 tion of this provision.

1     **TITLE VI—OTHER PROVISIONS**  
 2     **Subtitle A—Provisions Relating to**  
 3             **Housing**

4     **SEC. 601. TREATMENT OF QUALIFIED MORTGAGE BONDS.**

5             (a) YEAR HOLIDAY.—Section 143(a)(2)(A)(iv) of the  
 6 Internal Revenue Code of 1986 shall not apply to amounts  
 7 received during the 1-year period beginning on the date  
 8 of the enactment of this Act with respect to any bond out-  
 9 standing on such date.

10            (b) REPEAL OF REQUIRED USE OF CERTAIN PRIN-  
 11 CIPAL REPAYMENTS ON MORTGAGE SUBSIDY BOND  
 12 FINANCINGS TO REDEEM BONDS.—

13                 (1) IN GENERAL.—Subparagraph (A) of section  
 14 143(a)(2) (defining qualified mortgage issue) is  
 15 amended by adding “and” at the end of clause (ii),  
 16 by striking “, and” at the end of clause (iii) and in-  
 17 serting a period, and by striking clause (iv) and the  
 18 last sentence.

19                 (2) CONFORMING AMENDMENT.—Clause (ii) of  
 20 section 143(a)(2)(D) is amended by striking “(and  
 21 clause (iv) of subparagraph (A))”.

22                 (3) EFFECTIVE DATE.—The amendments made  
 23 by this subsection shall apply to bonds originally  
 24 issued after the date of the enactment of this Act.

1 **SEC. 602. PREMIUMS FOR MORTGAGE INSURANCE.**

2 (a) IN GENERAL.—Paragraph (3) of section 163(h)  
 3 (relating to qualified residence interest) is amended by  
 4 adding after subparagraph (D) the following new subpara-  
 5 graph:

6 “(E) MORTGAGE INSURANCE PREMIUMS  
 7 TREATED AS INTEREST.—

8 “(i) IN GENERAL.—Premiums paid or  
 9 accrued for qualified mortgage insurance  
 10 by a taxpayer during the taxable year in  
 11 connection with acquisition indebtedness  
 12 with respect to a qualified residence of the  
 13 taxpayer shall be treated for purposes of  
 14 this subsection as qualified residence inter-  
 15 est.

16 “(ii) PHASEOUT.—The amount other-  
 17 wise allowable as a deduction under clause  
 18 (i) shall be reduced (but not below zero) by  
 19 10 percent of such amount for each \$1,000  
 20 (\$500 in the case of a married individual  
 21 filing a separate return) (or fraction there-  
 22 of) that the taxpayer’s adjusted gross in-  
 23 come for the taxable year exceeds  
 24 \$100,000 (\$50,000 in the case of a mar-  
 25 ried individual filing a separate return).”.

1 (b) DEFINITION AND SPECIAL RULES.—Paragraph  
2 (4) of section 163(h) (relating to other definitions and spe-  
3 cial rules) is amended by adding at the end the following  
4 new subparagraphs:

5 “(E) QUALIFIED MORTGAGE INSUR-  
6 ANCE.—The term ‘qualified mortgage insur-  
7 ance’ means—

8 “(i) the Home Loan Guaranty Pro-  
9 gram of the Department of Veterans Af-  
10 fairs, and mortgage insurance provided by  
11 the Federal Housing Administration or the  
12 Rural Housing Administration, and

13 “(ii) private mortgage insurance (as  
14 defined by section 2 of the Homeowners  
15 Protection Act of 1998 (12 U.S.C. 4901),  
16 as in effect on the date of the enactment  
17 of this subparagraph).

18 “(F) SPECIAL RULES FOR PREPAID QUALI-  
19 FIED MORTGAGE INSURANCE.—Any amount  
20 paid by the taxpayer for qualified mortgage in-  
21 surance that is properly allocable to any mort-  
22 gage the payment of which extends to periods  
23 that are after the close of the taxable year in  
24 which such amount is paid shall be chargeable  
25 to capital account and shall be treated as paid

1           in such periods to which so allocated. No deduc-  
2           tion shall be allowed for the unamortized bal-  
3           ance of such account if such mortgage is satis-  
4           fied before the end of its term. The preceding  
5           sentences shall not apply to amounts paid for  
6           qualified mortgage insurance provided by the  
7           Department of Veterans Affairs or the Rural  
8           Housing Administration.”.

9           (c) INFORMATION RETURNS RELATING TO MORT-  
10          GAGE INSURANCE.—Section 6050H (relating to returns  
11          relating to mortgage interest received in trade or business  
12          from individuals) is amended by adding at the end the fol-  
13          lowing new subsection:

14          “(h) RETURNS RELATING TO MORTGAGE INSURANCE  
15          PREMIUMS.—

16                 “(1) IN GENERAL.—The Secretary may pre-  
17          scribe, by regulations, that any person who, in the  
18          course of a trade or business, receives from any indi-  
19          vidual premiums for mortgage insurance aggregating  
20          \$600 or more for any calendar year, shall make a  
21          return with respect to each such individual. Such re-  
22          turn shall be in such form, shall be made at such  
23          time, and shall contain such information as the Sec-  
24          retary may prescribe.

1           “(2) STATEMENT TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS  
2           REQUIRED.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall  
3           be furnished on or before January 31 of the year following the calendar year for which the return  
4           under paragraph (1) was required to be made.  
5

6           “(3) SPECIAL RULES.—For purposes of this subsection—  
7

8           “(A) rules similar to the rules of subsection (c) shall apply, and  
9

10          “(B) the term ‘mortgage insurance’ means—  
11

12           “(i) the Home Loan Guaranty Program of the Department of Veterans Affairs, and mortgage insurance provided by the Federal Housing Administration or the Rural Housing Administration, and  
13           “(ii) private mortgage insurance (as  
14           defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
15

16           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
17           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
18           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
19           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
20           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
21           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
22           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
23           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),  
24           “(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901),



1 as in effect on the date of the enactment  
2 of this subparagraph).”.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to amounts paid or accrued in tax-  
5 able years beginning after December 31, 2004, and ending  
6 before January 1, 2006.

7 **SEC. 603. INCREASE IN HISTORIC REHABILITATION CREDIT**  
8 **FOR CERTAIN LOW-INCOME HOUSING FOR**  
9 **THE ELDERLY.**

10 (a) IN GENERAL.—Section 47 (relating to rehabilita-  
11 tion credit) is amended by adding at the end the following  
12 new subsection:

13 “(e) SPECIAL RULE REGARDING CERTAIN HISTORIC  
14 STRUCTURES.—In the case of any qualified rehabilitation  
15 expenditure with respect to any certified historic struc-  
16 ture—

17 “(1) which is placed in service after the date of  
18 the enactment of this subsection,

19 “(2) which is part of a qualified low-income  
20 building with respect to which a credit under section  
21 42 is allowed, and

22 “(3) substantially all of the residential rental  
23 units of which are used for tenants who have at-  
24 tained the age of 65,

1 subsection (a)(2) shall be applied by substituting ‘25 per-  
2 cent’ for ‘20 percent’.”.

3 (b) APPLICATION OF MACRS.—The Internal Rev-  
4 enue Code of 1986 shall be applied and administered as  
5 if paragraph (4)(X) of section 251(d) of the Tax Reform  
6 Act of 1986 as applied to the amendments made by section  
7 201 of such Act had not been enacted with respect to any  
8 property described in such paragraph and placed in service  
9 after the date of the enactment of this Act.

10 (c) EFFECTIVE DATE.—The amendment made by  
11 subsection (a) shall apply to property placed in service  
12 after the date of the enactment of this Act.

## 13 **Subtitle B—Provisions Relating to** 14 **Bonds**

### 15 **SEC. 611. EXPANSION OF NEW YORK LIBERTY ZONE TAX** 16 **BENEFITS.**

17 (a) ADDITIONAL EXTENSION OF TAX-EXEMPT BOND  
18 FINANCING.—Section 1400L(d)(2)(D), as amended by  
19 this Act, is amended by striking “2006” and inserting  
20 “2010”.

21 (b) EXTENSION OF ADVANCE REFUNDINGS.—Sec-  
22 tion 1400L(e)(1) is amended by striking “2005” and in-  
23 serting “2006”.

1 **SEC. 612. MODIFICATIONS OF TREATMENT OF QUALIFIED**  
 2 **ZONE ACADEMY BONDS.**

3 (a) PROCEEDS OF BONDS MAY BE USED FOR CON-  
 4 STRUCTION AND LAND ACQUISITION.—Paragraph (5) of  
 5 section 1397E(d) (defining qualified purpose) is amend-  
 6 ed—

7 (1) by striking “rehabilitating or repairing” in  
 8 subparagraph (A) and inserting “constructing, reha-  
 9 bilitating, or repairing”, and

10 (2) by redesignating subparagraphs (B), (C),  
 11 and (D) as subparagraphs (C), (D), and (E), respec-  
 12 tively, and by inserting after subparagraph (A) the  
 13 following:

14 “(B) acquiring the land on which the facil-  
 15 ity is to be constructed,”.

16 (b) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to obligations issued after Decem-  
 18 ber 31, 2003.

19 **SEC. 613. MODIFICATIONS OF AUTHORITY OF INDIAN TRIB-**  
 20 **AL GOVERNMENTS TO ISSUE TAX-EXEMPT**  
 21 **BONDS.**

22 (a) IN GENERAL.—Paragraph (1) of section 7871(c)  
 23 (relating to Indian tribal governments treated as States  
 24 for certain purposes) is amended to read as follows:

25 “(1) IN GENERAL.—Subsection (a) of section  
 26 103 shall apply to any obligation issued by an In-

1       dian tribal government (or subdivision thereof) only  
2       if—

3               “(A) such obligation—

4                       “(i) is part of an issue 95 percent or  
5                       more of the net proceeds of which are to  
6                       be used to finance any facility located on  
7                       an Indian reservation, and

8                       “(ii) is issued before January 1, 2006,  
9                       or

10               “(B) such obligation is part of an issue  
11               substantially all of the proceeds of which are to  
12               be used in the exercise of any essential govern-  
13               mental function.”.

14       (b) SPECIAL RULES AND DEFINITIONS.—Subsection  
15 (c) of section 7871 is amended by inserting at the end  
16 the following new paragraph:

17               “(4) SPECIAL RULES AND DEFINITIONS.—

18                       “(A) EXCLUSION OF GAMING.—An obliga-  
19                       tion described in subparagraph (A) or (B) of  
20                       paragraph (1) may not be used to finance any  
21                       portion of a building in which class II or III  
22                       gaming (as defined in section 4 of the Indian  
23                       Gaming Regulatory Act (25 U.S.C. 2702)) is  
24                       conducted or housed.

1           “(B) INDIAN RESERVATION.—For pur-  
 2           poses of paragraph (1), the term ‘Indian res-  
 3           ervation’ means—

4                   “(i) a reservation, as defined in sec-  
 5                   tion 4(10) of the Indian Child Welfare Act  
 6                   of 1978 (25 U.S.C. 1903(10)), and

7                   “(ii) lands held under the provisions  
 8                   of the Alaska Native Claims Settlement  
 9                   Act (43 U.S.C. 1601 et seq.) by a Native  
 10                  corporation as defined in section 3(m) of  
 11                  such Act (43 U.S.C. 1602(m)).”.

12          (c) EFFECTIVE DATE.—The amendments made by  
 13          this section shall apply to obligations issued after the date  
 14          of the enactment of this Act.

15   **SEC. 614. DEFINITION OF MANUFACTURING FACILITY FOR**  
 16           **SMALL ISSUE BONDS.**

17          (a) IN GENERAL.—Section 144(a)(12) (relating to  
 18          termination dates) is amended by striking subparagraph  
 19          (C) and inserting the following new subparagraphs:

20                   “(C) MANUFACTURING FACILITY.—For  
 21                   purposes of this paragraph, the term ‘manufac-  
 22                   turing facility’ means any facility which is used  
 23                   in—

24                   “(i) the manufacture of tangible per-  
 25                   sonal property (including processing which

1 results in a change in the condition of such  
2 property),

3 “(ii) the manufacture or development  
4 of any software product or process if—

5 “(I) it takes more than 6 months  
6 to manufacture or develop such prod-  
7 uct,

8 “(II) the manufacture or develop-  
9 ment could not with due diligence be  
10 reasonably expected to occur in less  
11 than 6 months, and

12 “(III) the software product or  
13 process comprises programs, routines,  
14 and attendant documentation devel-  
15 oped and maintained for use in com-  
16 puter and telecommunications tech-  
17 nology, or

18 “(iii) the manufacture or development  
19 of any biobased product or bioenergy if—

20 “(I) it takes more than 6 months  
21 to manufacture or develop, and

22 “(II) the manufacture or develop-  
23 ment could not with due diligence be  
24 reasonably expected to occur in less  
25 than 6 months.

1           “(D) RELATED FACILITIES.—For purposes  
2 of subparagraph (C), the term ‘manufacturing  
3 facility’ includes a facility which is directly and  
4 functionally related to a manufacturing facility  
5 (determined without regard to subparagraph  
6 (C)) if—

7           “(i) such facility, including an office  
8 facility and a research and development fa-  
9 cility, is located on the same site as the  
10 manufacturing facility, and

11           “(ii) not more than 40 percent of the  
12 net proceeds of the issue are used to pro-  
13 vide such facility.

14           “(E) OTHER DEFINITIONS.—For purposes  
15 of subparagraph (C)(iii)—

16           “(i) BIOBASED PRODUCT.—The term  
17 ‘biobased product’ means a commercial or  
18 industrial product (other than food or  
19 feed) which utilizes biological products or  
20 renewable domestic agricultural (plant,  
21 animal, and marine) or forestry materials.

22           “(ii) BIOENERGY.—The term ‘bio-  
23 energy’ means biomass used in the produc-  
24 tion of energy, including liquid, solid, or  
25 gaseous fuels, electricity, and heat.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to obligations issued after the date  
 3 of the enactment of this Act.

4 **SEC. 615. CONSERVATION BONDS.**

5 (a) TAX-EXEMPT BOND FINANCING.—

6 (1) IN GENERAL.—For purposes of the Internal  
 7 Revenue Code of 1986, any qualified forest con-  
 8 servation bond shall be treated as an exempt facility  
 9 bond under section 142 of such Code.

10 (2) QUALIFIED FOREST CONSERVATION  
 11 BOND.—For purposes of this section, the term  
 12 “qualified forest conservation bond” means any bond  
 13 issued as part of an issue if—

14 (A) 95 percent or more of the net proceeds  
 15 (as defined in section 150(a)(3) of such Code)  
 16 of such issue are to be used for qualified project  
 17 costs,

18 (B) such bond is issued for a qualified or-  
 19 ganization, and

20 (C) such bond is issued before December  
 21 31, 2006.

22 (3) LIMITATION ON AGGREGATE AMOUNT  
 23 ISSUED.—

24 (A) IN GENERAL.—The maximum aggre-  
 25 gate face amount of bonds which may be issued



1 under this subsection shall not exceed  
2 \$1,500,000,000 for all projects (excluding re-  
3 funding bonds).

4 (B) ALLOCATION OF LIMITATION.—The  
5 limitation described in subparagraph (A) shall  
6 be allocated by the Secretary of the Treasury  
7 among qualified organizations based on criteria  
8 established by the Secretary not later than 180  
9 days after the date of the enactment of this sec-  
10 tion, after consultation with the Chief of the  
11 Forest Service.

12 (4) QUALIFIED PROJECT COSTS.—For purposes  
13 of this subsection, the term “qualified project costs”  
14 means the sum of—

15 (A) the cost of acquisition by the qualified  
16 organization from an unrelated person of for-  
17 ests and forest land which at the time of acqui-  
18 sition or immediately thereafter are subject to  
19 a conservation restriction described in sub-  
20 section (c)(2),

21 (B) capitalized interest on the qualified  
22 forest conservation bonds for the 3-year period  
23 beginning on the date of issuance of such  
24 bonds, and

1           (C) credit enhancement fees which con-  
2           stitute qualified guarantee fees (within the  
3           meaning of section 148 of such Code).

4           (5) SPECIAL RULES.—In applying the Internal  
5           Revenue Code of 1986 to any qualified forest con-  
6           servation bond, the following modifications shall  
7           apply:

8           (A) Section 146 of such Code (relating to  
9           volume cap) shall not apply.

10          (B) For purposes of section 147(b) of such  
11          Code (relating to maturity may not exceed 120  
12          percent of economic life), the land and standing  
13          timber acquired with proceeds of qualified for-  
14          est conservation bonds shall have an economic  
15          life of 35 years.

16          (C) Subsections (c) and (d) of section 147  
17          of such Code (relating to limitations on acquisi-  
18          tion of land and existing property) shall not  
19          apply.

20          (D) Section 57(a)(5) of such Code (relat-  
21          ing to tax-exempt interest) shall not apply to  
22          interest on qualified forest conservation bonds.

23          (6) TREATMENT OF CURRENT REFUNDING  
24          BONDS.—Paragraphs (2)(C) and (3) shall not apply  
25          to any bond (or series of bonds) issued to refund a

1 qualified forest conservation bond issued before De-  
2 cember 31, 2006, if—

3 (A) the average maturity date of the issue  
4 of which the refunding bond is a part is not  
5 later than the average maturity date of the  
6 bonds to be refunded by such issue,

7 (B) the amount of the refunding bond does  
8 not exceed the outstanding amount of the re-  
9 funded bond, and

10 (C) the net proceeds of the refunding bond  
11 are used to redeem the refunded bond not later  
12 than 90 days after the date of the issuance of  
13 the refunding bond.

14 For purposes of subparagraph (A), average maturity  
15 shall be determined in accordance with section  
16 147(b)(2)(A) of such Code.

17 (7) EFFECTIVE DATE.—This subsection shall  
18 apply to obligations issued on or after the date  
19 which is 180 days after the enactment of this Act.

20 (b) ITEMS FROM QUALIFIED HARVESTING ACTIVI-  
21 TIES NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.—

22 (1) IN GENERAL.—Income, gains, deductions,  
23 losses, or credits from a qualified harvesting activity  
24 conducted by a qualified organization shall not be

1 subject to tax or taken into account under subtitle  
2 A of the Internal Revenue Code of 1986.

3 (2) LIMITATION.—The amount of income ex-  
4 cluded from gross income under paragraph (1) for  
5 any taxable year shall not exceed the amount used  
6 by the qualified organization to make debt service  
7 payments during such taxable year for qualified for-  
8 est conservation bonds.

9 (3) QUALIFIED HARVESTING ACTIVITY.—For  
10 purposes of paragraph (1)—

11 (A) IN GENERAL.—The term “qualified  
12 harvesting activity” means the sale, lease, or  
13 harvesting, of standing timber—

14 (i) on land owned by a qualified orga-  
15 nization which was acquired with proceeds  
16 of qualified forest conservation bonds,

17 (ii) with respect to which a written ac-  
18 knowledgement has been obtained by the  
19 qualified organization from the State or  
20 local governments with jurisdiction over  
21 such land that the acquisition lessens the  
22 burdens of such government with respect  
23 to such land, and

1 (iii) pursuant to a qualified conserva-  
2 tion plan adopted by the qualified organi-  
3 zation.

4 (B) EXCEPTIONS.—

5 (i) CESSATION AS QUALIFIED ORGANI-  
6 ZATION.—The term “qualified harvesting  
7 activity” shall not include any sale, lease,  
8 or harvesting for any period during which  
9 the organization ceases to qualify as a  
10 qualified organization.

11 (ii) EXCEEDING LIMITS ON HAR-  
12 VESTING.—The term “qualified harvesting  
13 activity” shall not include any sale, lease,  
14 or harvesting of standing timber on land  
15 acquired with proceeds of qualified forest  
16 conservation bonds to the extent that—

17 (I) the average annual area of  
18 timber harvested from such land ex-  
19 ceeds 2.5 percent of the total area of  
20 such land or,

21 (II) the quantity of timber re-  
22 moved from such land exceeds the  
23 quantity which can be removed from  
24 such land annually in perpetuity on a

1                   sustained-yield basis with respect to  
2                   such land.

3                   The limitations under subclauses (I) and  
4                   (II) shall not apply to post-fire restoration  
5                   and rehabilitation or sanitation harvesting  
6                   of timber stands which are substantially  
7                   damaged by fire, windthrow, or other ca-  
8                   tastrophes, or which are in imminent dan-  
9                   ger from insect or disease attack.

10               (4) TERMINATION.—This subsection shall not  
11               apply to any qualified harvesting activity of a quali-  
12               fied organization occurring after the date on which  
13               there is no outstanding qualified forest conservation  
14               bond with respect to such qualified organization or  
15               any such bond ceases to be a tax-exempt bond.

16               (5) PARTIAL RECAPTURE OF BENEFITS IF HAR-  
17               VESTING LIMIT EXCEEDED.—If, as of the date that  
18               this subsection ceases to apply under paragraph (3),  
19               the average annual area of timber harvested from  
20               the land exceeds the requirement of paragraph  
21               (3)(B)(ii)(I), the tax imposed by chapter 1 of the In-  
22               ternal Revenue Code of 1986 shall be increased,  
23               under rules prescribed by the Secretary of the  
24               Treasury, by the sum of the tax benefits attributable  
25               to such excess and interest at the underpayment

1 rate under section 6621 of such Code for the period  
2 of the underpayment.

3 (c) DEFINITIONS.—For purposes of this section—

4 (1) QUALIFIED CONSERVATION PLAN.—The  
5 term “qualified conservation plan” means a multiple  
6 land use program or plan which—

7 (A) is designed and administered primarily  
8 for the purposes of protecting and enhancing  
9 wildlife and fish, timber, scenic attributes,  
10 recreation, and soil and water quality of the  
11 forest and forest land,

12 (B) mandates that conservation of forest  
13 and forest land is the single-most significant  
14 use of the forest and forest land, and

15 (C) requires that timber harvesting be con-  
16 sistent with—

17 (i) restoring and maintaining ref-  
18 erence conditions for the region’s ecotype,

19 (ii) restoring and maintaining a rep-  
20 resentative sample of young, mid, and late  
21 successional forest age classes,

22 (iii) maintaining or restoring the re-  
23 sources’ ecological health for purposes of  
24 preventing damage from fire, insect, or dis-  
25 ease,

- 1 (iv) maintaining or enhancing wildlife  
2 or fish habitat, or  
3 (v) enhancing research opportunities  
4 in sustainable renewable resource uses.

5 (2) CONSERVATION RESTRICTION.—The con-  
6 servation restriction described in this paragraph is a  
7 restriction which—

8 (A) is granted in perpetuity to an unre-  
9 lated person which is described in section  
10 170(h)(3) of such Code and which, in the case  
11 of a nongovernmental unit, is organized and op-  
12 erated for conservation purposes,

13 (B) meets the requirements of clause (ii)  
14 or (iii)(II) of section 170(h)(4)(A) of such  
15 Code,

16 (C) obligates the qualified organization to  
17 pay the costs incurred by the holder of the con-  
18 servation restriction in monitoring compliance  
19 with such restriction, and

20 (D) requires an increasing level of con-  
21 servation benefits to be provided whenever cir-  
22 cumstances allow it.

23 (3) QUALIFIED ORGANIZATION.—The term  
24 “qualified organization” means an organization—



1           (A) which is a nonprofit organization sub-  
2           stantially all the activities of which are chari-  
3           table, scientific, or educational, including ac-  
4           quiring, protecting, restoring, managing, and  
5           developing forest lands and other renewable re-  
6           sources for the long-term charitable, edu-  
7           cational, scientific and public benefit,

8           (B) more than half of the value of the  
9           property of which consists of forests and forest  
10          land acquired with the proceeds from qualified  
11          forest conservation bonds,

12          (C) which periodically conducts educational  
13          programs designed to inform the public of envi-  
14          ronmentally sensitive forestry management and  
15          conservation techniques,

16          (D) which has at all times a board of di-  
17          rectors—

18               (i) at least 20 percent of the members  
19               of which represent the holders of the con-  
20               servation restriction described in para-  
21               graph (2),

22               (ii) at least 20 percent of the mem-  
23               bers of which are public officials, and

24               (iii) not more than one-third of the  
25               members of which are individuals who are

1 or were at any time within 5 years before  
2 the beginning of a term of membership on  
3 the board, an employee of, independent  
4 contractor with respect to, officer of, direc-  
5 tor of, or held a material financial interest  
6 in, a commercial forest products enterprise  
7 with which the qualified organization has a  
8 contractual or other financial arrangement,

9 (E) the bylaws of which require at least  
10 two-thirds of the members of the board of direc-  
11 tors to vote affirmatively to approve the quali-  
12 fied conservation plan and any change thereto,  
13 and

14 (F) upon dissolution, is required to dedi-  
15 cate its assets to—

16 (i) an organization described in sec-  
17 tion 501(c)(3) of such Code which is orga-  
18 nized and operated for conservation pur-  
19 poses, or

20 (ii) a governmental unit described in  
21 section 170(c)(1) of such Code.

22 (4) UNRELATED PERSON.—The term “unre-  
23 lated person” means a person who is not a related  
24 person.

1           (5) RELATED PERSON.—A person shall be  
2       treated as related to another person if—

3           (A) such person bears a relationship to  
4       such other person described in section 267(b)  
5       (determined without regard to paragraph (9)  
6       thereof), or 707(b)(1), of such Code, deter-  
7       mined by substituting “25 percent” for “50  
8       percent” each place it appears therein, and

9           (B) in the case such other person is a non-  
10      profit organization, if such person controls di-  
11      rectly or indirectly more than 25 percent of the  
12      governing body of such organization.

13 **SEC. 616. INDIAN SCHOOL CONSTRUCTION.**

14       (a) DEFINITIONS.—In this section:

15           (1) BUREAU.—The term “Bureau” means the  
16      Bureau of Indian Affairs of the Department.

17           (2) DEPARTMENT.—The term “Department”  
18      means the Department of the Interior.

19           (3) ESCROW ACCOUNT.—The term “escrow ac-  
20      count” means the tribal school modernization escrow  
21      account established under subsection (b)(6)(B)(i).

22           (4) INDIAN.—The term “Indian” means any in-  
23      dividual who is a member of an Indian tribe.

24           (5) INDIAN TRIBE.—

1 (A) IN GENERAL.—The term “Indian  
2 tribe” has the meaning given the term “Indian  
3 tribal government” by section 7701(a)(40) of  
4 the Internal Revenue Code of 1986 (including  
5 the application of section 7871(d) of that  
6 Code).

7 (B) INCLUSION.—The term “Indian tribe”  
8 includes a consortium of Indian tribes approved  
9 by the Secretary.

10 (6) SECRETARY.—The term “Secretary” means  
11 the Secretary of the Interior.

12 (7) TRIBAL SCHOOL.—The term “tribal school”  
13 means an elementary school, secondary school, or  
14 dormitory that—

15 (A) is operated by a tribal organization or  
16 the Bureau for the education of Indian chil-  
17 dren; and

18 (B) under a contract, a grant, or an agree-  
19 ment, or for a Bureau-operated school, receives  
20 financial assistance to pay the costs of oper-  
21 ation from funds made available under—

22 (i) section 102, 103(a), or 208 of the  
23 Indian Self-Determination and Education  
24 Assistance Act (25 U.S.C. 450f, 450h(a),  
25 458d); or

1 (ii) the Tribally Controlled Schools  
2 Act of 1988 (25 U.S.C. 2501 et seq.).

3 (b) ISSUANCE OF BONDS.—

4 (1) IN GENERAL.—The Secretary shall establish  
5 a pilot program under which eligible Indian tribes  
6 may issue qualified tribal school modernization  
7 bonds to provide funding for the construction, reha-  
8 bilitation, or repair of tribal schools (including the  
9 advance planning and design of tribal schools).

10 (2) ELIGIBILITY.—

11 (A) IN GENERAL.—To be eligible to issue  
12 any qualified tribal school modernization bond  
13 under the program under paragraph (1), an In-  
14 dian tribe shall—

15 (i) prepare and submit to the Sec-  
16 retary a plan of construction that meets  
17 the requirements of subparagraph (B);

18 (ii) provide for quarterly and final in-  
19 spection of the project by the Bureau; and

20 (iii) pledge that the facilities financed  
21 by the bond will be used primarily for ele-  
22 mentary and secondary educational pur-  
23 poses for not less than the period during  
24 which the bond remains outstanding.

1 (B) PLAN OF CONSTRUCTION.—A plan of  
2 construction referred to in subparagraph (A)(i)  
3 meets the requirements of this subparagraph if  
4 the plan—

5 (i) contains a description of the con-  
6 struction to be carried out with funding  
7 provided under a qualified tribal school  
8 modernization bond;

9 (ii) demonstrates that a comprehen-  
10 sive survey has been completed to deter-  
11 mine the construction needs of the tribal  
12 school involved;

13 (iii) contains assurances that funding  
14 under the bond will be used only for the  
15 activities described in the plan;

16 (iv) contains a response to the evalua-  
17 tion criteria contained in Instructions and  
18 Application for Replacement School Con-  
19 struction, Revision 6, dated February 6,  
20 1999; and

21 (v) contains any other reasonable and  
22 related information determined to be ap-  
23 propriate by the Secretary.

24 (C) PRIORITY.—In determining whether an  
25 Indian tribe is eligible to participate in the pro-

1           gram under this subsection, the Secretary shall  
2           give priority to an Indian tribe that, as dem-  
3           onstrated by the relevant plans of construction,  
4           will fund projects—

5                   (i) described in the Education Facili-  
6                   ties Replacement Construction Priorities  
7                   List, as of fiscal year 2000, of the Bureau  
8                   (65 Fed. Reg. 4623);

9                   (ii) described in any subsequent prior-  
10                  ities list published in the Federal Register;  
11                  or

12                  (iii) that meet the criteria for ranking  
13                  schools as described in Instructions and  
14                  Application for Replacement School Con-  
15                  struction, Revision 6, dated February 6,  
16                  1999.

17           (D) ADVANCE PLANNING AND DESIGN  
18           FUNDING.—

19                   (i) IN GENERAL.—An Indian tribe  
20                   may propose in the plan of construction of  
21                   the Indian tribe to receive advance plan-  
22                   ning and design funding from the escrow  
23                   account.

24                   (ii) CONDITIONS ON ALLOCATION OF  
25                   FUNDS.—As a condition to the allocation

1 to an Indian tribe of advance planning and  
2 design funds from the escrow account  
3 under clause (i), the Indian tribe shall  
4 agree—

5 (I) to issue qualified tribal school  
6 modernization bonds after the date of  
7 receipt of the funds; and

8 (II) as a condition of each bond  
9 issuance, that the Indian tribe will de-  
10 posit into the escrow account, or a  
11 fund managed by the trustee as de-  
12 scribed in paragraph (4)(C), an  
13 amount equal to the amount of funds  
14 received from the escrow account.

15 (3) PERMISSIBLE ACTIVITIES.—In addition to  
16 the use of funds permitted under paragraph (1), an  
17 Indian tribe may use amounts received through the  
18 issuance of a qualified tribal school modernization  
19 bond—

20 (A) to enter into and make payments  
21 under contracts with licensed and bonded archi-  
22 tects, engineers, and construction firms—

23 (i) to determine the needs of the tribal  
24 school; and



1 (ii) for the design and engineering of  
2 the tribal school;

3 (B) enter into and make payments under  
4 contracts with financial advisers, underwriters,  
5 attorneys, trustees, and other professionals who  
6 would be able to provide assistance to the In-  
7 dian tribe in issuing bonds; and

8 (C) carry out other activities determined to  
9 be appropriate by the Secretary.

10 (4) BOND TRUSTEE.—

11 (A) IN GENERAL.—Notwithstanding any  
12 other provision of law, any qualified tribal  
13 school modernization bond issued by an Indian  
14 tribe under this subsection shall be subject to a  
15 trust agreement between the Indian tribe and a  
16 trustee.

17 (B) TRUSTEE.—Any bank or trust com-  
18 pany that meets requirements established by  
19 the Secretary may be designated as a trustee  
20 under subparagraph (A).

21 (C) CONTENT OF TRUST AGREEMENT.—A  
22 trust agreement entered into by an Indian tribe  
23 under this paragraph shall specify that the  
24 trustee, with respect to any bond issued under  
25 this subsection, shall—

- 1 (i) act as a repository for the proceeds  
2 of the bond;
- 3 (ii) make payments to bondholders;
- 4 (iii) receive, as a condition to the  
5 issuance of the bond, a transfer of funds  
6 from the escrow account, or from other  
7 funds furnished by or on behalf of the In-  
8 dian tribe, in an amount that (including  
9 interest earnings from the investment of  
10 the funds in obligations of, or fully guaran-  
11 teed by, the United States, or from other  
12 investments authorized by paragraph (10))  
13 will produce funds sufficient to timely pay  
14 in full the entire principal amount of the  
15 bond on the stated maturity date of the  
16 bond;
- 17 (iv) invest the funds transferred under  
18 clause (iii) in an investment described in  
19 that clause; and
- 20 (v)(I) hold and invest the funds trans-  
21 ferred under clause (iii) in a segregated  
22 fund or account under the agreement; and
- 23 (II) use the fund or account solely for  
24 payment of the costs of items described in  
25 paragraph (3).

1 (D) REQUIREMENTS FOR MAKING DIRECT  
2 PAYMENTS.—

3 (i) PAYMENTS.—

4 (I) IN GENERAL.—Notwith-  
5 standing any other provision of law,  
6 the trustee shall make any payment  
7 referred to in subparagraph (C)(v) in  
8 accordance with such requirements as  
9 the Indian tribe shall prescribe in the  
10 trust agreement entered into under  
11 subparagraph (C).

12 (II) INSPECTION.—Before mak-  
13 ing a payment for a project to a con-  
14 tractor under subparagraph (C)(v), to  
15 ensure completion of the project, the  
16 trustee shall require an inspection of  
17 the project by—

18 (aa) a local financial institu-  
19 tion; or

20 (bb) an independent inspect-  
21 ing architect or engineer.

22 (ii) CONTRACTS.—Each contract re-  
23 ferred to in paragraph (3) shall specify, or  
24 be renegotiated to specify, that payments

1 under the contract shall be made in ac-  
2 cordance with this paragraph.

3 (5) PAYMENTS OF PRINCIPAL AND INTEREST.—

4 (A) PRINCIPAL.—

5 (i) IN GENERAL.—No principal pay-  
6 ment on any qualified tribal school mod-  
7 ernization bond shall be required under  
8 this subsection until the final, stated date  
9 on which the bond reaches maturity.

10 (ii) MATURITY; OUTSTANDING PRIN-  
11 CIPAL.—With respect to a qualified tribal  
12 school modernization bond issued under  
13 this subsection—

14 (I) the bond shall reach maturity  
15 not later than 15 years after the date  
16 of issuance of the bond; and

17 (II) on the date on which the  
18 bond reaches maturity, the entire out-  
19 standing principal under the bond  
20 shall become due and payable.

21 (B) INTEREST.—There shall be awarded a  
22 tax credit under section 1400M of the Internal  
23 Revenue Code of 1986 in lieu of interest on a  
24 qualified tribal school modernization bond  
25 issued under this subsection.

1 (6) BOND GUARANTEES.—

2 (A) IN GENERAL.—Payment of the prin-  
3 cipal portion of a qualified tribal school mod-  
4 ernization bond issued under this subsection  
5 shall be guaranteed solely by amounts deposited  
6 with each respective bond trustee as described  
7 in paragraph (4)(C)(iii).

8 (B) ESTABLISHMENT OF ACCOUNT.—

9 (i) IN GENERAL.—Notwithstanding  
10 any other provision of law, the Secretary  
11 may—

12 (I) establish a tribal school mod-  
13 ernization escrow account; and

14 (II) beginning in fiscal year  
15 2005, from amounts made available  
16 for school replacement under the con-  
17 struction account of the Bureau, de-  
18 posit not more than \$30,000,000 for  
19 each fiscal year into the escrow ac-  
20 count.

21 (ii) TRANSFERS OF EXCESS PRO-  
22 CEEDS.—Excess proceeds held under any  
23 trust agreement that are not needed for  
24 any of the purposes described in clauses  
25 (iii) and (v) of paragraph (4)(C) shall be

1 transferred, from time to time, by the  
2 trustee for deposit into the escrow account.

3 (iii) PAYMENTS.—The Secretary shall  
4 use any amounts deposited in the escrow  
5 account under clauses (i) and (ii)—

6 (I) to make payments to trustees  
7 appointed and acting in accordance  
8 with paragraph (4); or

9 (II) to make payments described  
10 in paragraph (2)(D).

11 (7) LIMITATIONS.—

12 (A) OBLIGATION TO REPAY.—

13 (i) IN GENERAL.—Notwithstanding  
14 any other provision of law, the principal  
15 amount on any qualified tribal school mod-  
16 ernization bond issued under this sub-  
17 section shall be repaid only to the extent of  
18 any escrowed funds provided under para-  
19 graph (4)(C)(iii).

20 (ii) NO GUARANTEE.—No qualified  
21 tribal school modernization bond issued by  
22 an Indian tribe under this subsection shall  
23 be an obligation of, and no payment of the  
24 principal of such a bond shall be guaran-  
25 teed by—

- 1 (I) the United States;  
2 (II) the Indian tribe; or  
3 (III) the tribal school for which  
4 the bond was issued.

5 (B) LAND AND FACILITIES.—No land or  
6 facility purchased or improved with amounts  
7 derived from a qualified tribal school mod-  
8 ernization bond issued under this subsection  
9 shall be mortgaged or used as collateral for the  
10 bond.

11 (8) SALE OF BONDS.—A qualified tribal school  
12 modernization bond may be sold at a purchase price  
13 equal to, in excess of, or at a discount from, the par  
14 amount of the bond.

15 (9) TREATMENT OF TRUST AGREEMENT EARN-  
16 INGS.—No amount earned through the investment of  
17 funds under the control of a trustee under any trust  
18 agreement described in paragraph (4) shall be sub-  
19 ject to Federal income taxation.

20 (10) INVESTMENT OF SINKING FUNDS.—A  
21 sinking fund established for the purpose of the pay-  
22 ment of principal on a qualified tribal school mod-  
23 ernization bond issued under this subsection shall be  
24 invested in—

1 (A) obligations issued by or guaranteed by  
2 the United States; or

3 (B) such other assets as the Secretary of  
4 the Treasury may by regulation allow.

5 (c) EXPANSION OF INCENTIVES FOR TRIBAL  
6 SCHOOLS.—Chapter 1 is amended by adding at the end  
7 the following new subchapter:

8 **“Subchapter Z—Tribal School Modernization**  
9 **Provisions**

“Sec. 1400M. Credit to holders of qualified tribal school modernization bonds.

10 **“SEC. 1400M. CREDIT TO HOLDERS OF QUALIFIED TRIBAL**  
11 **SCHOOL MODERNIZATION BONDS.**

12 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-  
13 payer who holds a qualified tribal school modernization  
14 bond on a credit allowance date of such bond which occurs  
15 during the taxable year, there shall be allowed as a credit  
16 against the tax imposed by this chapter for such taxable  
17 year an amount equal to the sum of the credits determined  
18 under subsection (b) with respect to credit allowance dates  
19 during such year on which the taxpayer holds such bond.

20 “(b) AMOUNT OF CREDIT.—

21 “(1) IN GENERAL.—The amount of the credit  
22 determined under this subsection with respect to any  
23 credit allowance date for a qualified tribal school



1 modernization bond is 25 percent of the annual  
2 credit determined with respect to such bond.

3 “(2) ANNUAL CREDIT.—The annual credit de-  
4 termined with respect to any qualified tribal school  
5 modernization bond is the product of—

6 “(A) the applicable credit rate, multiplied  
7 by

8 “(B) the outstanding face amount of the  
9 bond.

10 “(3) APPLICABLE CREDIT RATE.—For purposes  
11 of paragraph (1), the applicable credit rate with re-  
12 spect to an issue is the rate equal to an average  
13 market yield (as of the date of sale of the issue) on  
14 outstanding long-term corporate obligations (as de-  
15 termined by the Secretary).

16 “(4) SPECIAL RULE FOR ISSUANCE AND RE-  
17 DEMPTION.—In the case of a bond which is issued  
18 during the 3-month period ending on a credit allow-  
19 ance date, the amount of the credit determined  
20 under this subsection with respect to such credit al-  
21 lowance date shall be a ratable portion of the credit  
22 otherwise determined based on the portion of the 3-  
23 month period during which the bond is outstanding.  
24 A similar rule shall apply when the bond is re-  
25 deemed.

1 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

2 “(1) IN GENERAL.—The credit allowed under  
3 subsection (a) for any taxable year shall not exceed  
4 the excess of—

5 “(A) the sum of the regular tax liability  
6 (as defined in section 26(b)) plus the tax im-  
7 posed by section 55, over

8 “(B) the sum of the credits allowable  
9 under part IV of subchapter A (other than sub-  
10 part C thereof, relating to refundable credits).

11 “(2) CARRYOVER OF UNUSED CREDIT.—If the  
12 credit allowable under subsection (a) exceeds the  
13 limitation imposed by paragraph (1) for such taxable  
14 year, such excess shall be carried to the succeeding  
15 taxable year and added to the credit allowable under  
16 subsection (a) for such taxable year.

17 “(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION  
18 BOND; OTHER DEFINITIONS.—For purposes of this sec-  
19 tion—

20 “(1) QUALIFIED TRIBAL SCHOOL MODERNIZA-  
21 TION BOND.—

22 “(A) IN GENERAL.—The term ‘qualified  
23 tribal school modernization bond’ means, sub-  
24 ject to subparagraph (B), any bond issued as  
25 part of an issue under section 616(b) of the

1           Jumpstart Our Business Strength (JOBS) Act,  
2           as in effect on the date of the enactment of this  
3           section, if—

4                   “(i) 95 percent or more of the pro-  
5                   ceeds of such issue are to be used for the  
6                   construction, rehabilitation, or repair of a  
7                   school facility funded by the Bureau of In-  
8                   dian Affairs of the Department of the Inte-  
9                   rior or for the acquisition of land on which  
10                  such a facility is to be constructed with  
11                  part of the proceeds of such issue,

12                  “(ii) the bond is issued by an Indian  
13                  tribe,

14                  “(iii) the issuer designates such bond  
15                  for purposes of this section, and

16                  “(iv) the term of each bond which is  
17                  part of such issue does not exceed 15  
18                  years.

19                  “(B) NATIONAL LIMITATION ON AMOUNT  
20                  OF BONDS DESIGNATED.—

21                   “(i) NATIONAL LIMITATION.—There is  
22                   a national qualified tribal school mod-  
23                   ernization bond limitation for each cal-  
24                   endar year. Such limitation is—

25                           “(I) \$200,000,000 for 2005,

1 “(II) \$200,000,000 for 2006,

2 and

3 “(III) zero after 2006.

4 “(ii) ALLOCATION OF LIMITATION.—

5 The national qualified tribal school mod-  
6 ernization bond limitation shall be allo-  
7 cated to Indian tribes by the Secretary of  
8 the Interior subject to the provisions of  
9 section 616 of the Jumpstart Our Business  
10 Strength (JOBS) Act, as in effect on the  
11 date of the enactment of this section.

12 “(iii) DESIGNATION SUBJECT TO LIM-  
13 ITATION AMOUNT.—The maximum aggre-  
14 gate face amount of bonds issued during  
15 any calendar year which may be designated  
16 under subsection (d)(1) with respect to any  
17 Indian tribe shall not exceed the limitation  
18 amount allocated to such government  
19 under clause (ii) for such calendar year.

20 “(iv) CARRYOVER OF UNUSED LIMITA-  
21 TION.—If for any calendar year—

22 “(I) the limitation amount under  
23 this subparagraph, exceeds

1                   “(II) the amount of qualified  
2                   tribal school modernization bonds  
3                   issued during such year,  
4                   the limitation amount under this subpara-  
5                   graph for the following calendar year shall  
6                   be increased by the amount of such excess.  
7                   The preceding sentence shall not apply if  
8                   such following calendar year is after 2012.

9                   “(2) CREDIT ALLOWANCE DATE.—The term  
10                  ‘credit allowance date’ means—

11                   “(A) March 15,

12                   “(B) June 15,

13                   “(C) September 15, and

14                   “(D) December 15.

15                  Such term includes the last day on which the bond  
16                  is outstanding.

17                  “(3) BOND.—The term ‘bond’ includes any ob-  
18                  ligation.

19                  “(4) TRIBE.—The term ‘tribe’ has the meaning  
20                  given the term ‘Indian tribal government’ by section  
21                  7701(a)(40), including the application of section  
22                  7871(d). Such term includes any consortium of  
23                  tribes approved by the Secretary of the Interior.

24                  “(e) CREDIT INCLUDED IN GROSS INCOME.—Gross  
25                  income includes the amount of the credit allowed to the

1 taxpayer under this section (determined without regard to  
2 subsection (c)) and the amount so included shall be treat-  
3 ed as interest income.

4 “(f) BONDS HELD BY REGULATED INVESTMENT  
5 COMPANIES.—If any qualified tribal school modernization  
6 bond is held by a regulated investment company, the credit  
7 determined under subsection (a) shall be allowed to share-  
8 holders of such company under procedures prescribed by  
9 the Secretary.

10 “(g) TREATMENT FOR ESTIMATED TAX PUR-  
11 POSES.—Solely for purposes of sections 6654 and 6655,  
12 the credit allowed by this section to a taxpayer by reason  
13 of holding a qualified tribal school modernization bonds  
14 on a credit allowance date shall be treated as if it were  
15 a payment of estimated tax made by the taxpayer on such  
16 date.

17 “(h) CREDIT TREATED AS ALLOWED UNDER PART  
18 IV OF SUBCHAPTER A.—For purposes of subtitle F, the  
19 credit allowed by this section shall be treated as a credit  
20 allowable under part IV of subchapter A of this chapter.

21 “(i) REPORTING.—Issuers of qualified tribal school  
22 modernization bonds shall submit reports similar to the  
23 reports required under section 149(e).”.

1 (d) CONFORMING AMENDMENT.—The table of sub-  
 2 chapters for chapter 1 is amended by adding at the end  
 3 the following new item:

“SUBCHAPTER Z. Tribal school modernization provisions.”.

4 (e) ADDITIONAL PROVISIONS.—

5 (1) SOVEREIGN IMMUNITY.—This section and  
 6 the amendments made by this section shall not be  
 7 construed to impact, limit, or affect the sovereign  
 8 immunity of the Federal Government or any State  
 9 or tribal government.

10 (2) APPLICATION.—This section and the  
 11 amendments made by this section shall take effect  
 12 on the date of the enactment of this Act with respect  
 13 to bonds issued after December 31, 2004, regardless  
 14 of the status of regulations promulgated thereunder.

## 15 **Subtitle C—Provisions Relating to** 16 **Depreciation**

### 17 **SEC. 621. SPECIAL PLACED IN SERVICE RULE FOR BONUS** 18 **DEPRECIATION PROPERTY.**

19 (a) IN GENERAL.—Section 168(k)(2)(D) (relating to  
 20 special rules) is amended by adding at the end the fol-  
 21 lowing new clause:

22 “(iii) SYNDICATION.—For purposes of  
 23 subparagraph (A)(ii), if—

1           “(I) property is originally placed  
2           in service after September 10, 2001,  
3           by the lessor of such property,

4           “(II) such property is sold by  
5           such lessor or any subsequent pur-  
6           chaser within 3 months after the date  
7           so placed in service (or, in the case of  
8           multiple units of property subject to  
9           the same lease, within 3 months after  
10          the date the final unit is placed in  
11          service, so long as the period between  
12          the time the first unit is placed in  
13          service and the time the last unit is  
14          placed in service does not exceed 12  
15          months), and

16          “(III) the user of such property  
17          after the last sale during such 3-  
18          month period remains the same as  
19          when such property was originally  
20          placed in service,

21          such property shall be treated as originally  
22          placed in service not earlier than the date  
23          of such last sale, so long as no previous  
24          owner of such property elects the applica-



1                   tion of this subsection with respect to such  
2                   property.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to sales after the date of the enact-  
5 ment of this Act.

6 **SEC. 622. MODIFICATION OF DEPRECIATION ALLOWANCE**  
7 **FOR AIRCRAFT.**

8           (a) **AIRCRAFT TREATED AS QUALIFIED PROP-**  
9 **ERTY.**—

10           (1) **IN GENERAL.**—Paragraph (2) of section  
11 168(k) is amended by redesignating subparagraphs  
12 (C) through (F) as subparagraphs (D) through (G),  
13 respectively, and by inserting after subparagraph  
14 (B) the following new subparagraph:

15                   “(C) **CERTAIN AIRCRAFT.**—The term  
16                   ‘qualified property’ includes property—

17                           “(i) which meets the requirements of  
18                           clauses (ii) and (iii) of subparagraph (A),

19                           “(ii) which is an aircraft which is not  
20                           a transportation property (as defined in  
21                           subparagraph (B)(iii)) other than for agri-  
22                           cultural or firefighting purposes,

23                           “(iii) which is purchased and on which  
24                           such purchaser, at the time of the contract

1 for purchase, has made a nonrefundable  
2 deposit of the lesser of—

3 “(I) 10 percent of the cost, or

4 “(II) \$100,000, and

5 “(iv) which has—

6 “(I) an estimated production pe-  
7 riod exceeding 4 months, and

8 “(II) a cost exceeding  
9 \$200,000.”.

10 (2) PLACED IN SERVICE DATE.—Clause (iv) of  
11 section 168(k)(2)(A) is amended by striking “sub-  
12 paragraph (B)” and inserting “subparagraphs (B)  
13 and (C)”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 168(k)(2)(B) is amended by adding  
16 at the end the following new clause:

17 “(iv) APPLICATION OF SUBPARA-  
18 GRAPH.—This subparagraph shall not  
19 apply to any property which is described in  
20 subparagraph (C).”.

21 (2) Section 168(k)(4)(A)(ii) is amended by  
22 striking “paragraph (2)(C)” and inserting “para-  
23 graph (2)(D)”.

(4) Section 168(k)(4)(C) is amended by striking “subparagraphs (B) and (D)” and inserting “subparagraphs (B), (C), and (E)”.

(5) Section 168(k)(4)(D) is amended by striking “Paragraph (2)(E)” and inserting “Paragraph (2)(F)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(a) 7-YEAR PROPERTY.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

19 “(ii) any motorsports entertainment  
20 complex, and”.

(b) DEFINITION.—Section 168(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

24 “(15) MOTORSPORTS ENTERTAINMENT COM-  
25 PLEX.—

1           “(A) IN GENERAL.—The term ‘motor-  
2           sports entertainment complex’ means a racing  
3           track facility which—

4                   “(i) is permanently situated on land,  
5                   and

6                   “(ii) during the 36-month period fol-  
7                   lowing the first day of the month in which  
8                   the asset is placed in service, is scheduled  
9                   to host 1 or more racing events for auto-  
10                  mobiles (of any type), trucks, or motor-  
11                  cycles which are open to the public for the  
12                  price of admission.

13           “(B) ANCILLARY AND SUPPORT FACILI-  
14           TIES.—Such term shall include, if owned by the  
15           complex and provided for the benefit of patrons  
16           of the complex—

17                   “(i) ancillary grounds and facilities  
18                   and land improvements in support of the  
19                   complex’s activities (including parking lots,  
20                   sidewalks, waterways, bridges, fences, and  
21                   landscaping),

22                   “(ii) support facilities (including food  
23                   and beverage retailing, souvenir vending,  
24                   and other nonlodging accommodations),  
25                   and

1                   “(iii) appurtenances associated with  
 2                   such facilities and related attractions and  
 3                   amusements (including ticket booths, race  
 4                   track surfaces, suites and hospitality facili-  
 5                   ties, grandstands and viewing structures,  
 6                   props, walls, facilities that support the de-  
 7                   livery of entertainment services, other spe-  
 8                   cial purpose structures, facades, shop inte-  
 9                   riors, and buildings).

10                   “(C) EXCEPTION.—Such term shall not in-  
 11                   clude any transportation equipment, adminis-  
 12                   trative services assets, warehouses, administra-  
 13                   tive buildings, hotels, or motels.”.

14                   (c) EFFECTIVE DATE.—

15                   (1) IN GENERAL.—The amendments made by  
 16                   this section shall apply to any property placed in  
 17                   service after the date of the enactment of this Act  
 18                   and before January 1, 2008.

19                   (2) NO INFERENCE.—Nothing in the amend-  
 20                   ments made by this section shall be construed to af-  
 21                   fect the treatment of expenses incurred on or before  
 22                   the date of the enactment of this Act.

23 **SEC. 624. MINIMUM TAX RELIEF FOR CERTAIN TAXPAYERS.**

24                   (a) ELECTION TO INCREASE MINIMUM TAX CREDIT  
 25                   LIMITATION IN LIEU OF BONUS DEPRECIATION.—

1           (1) IN GENERAL.—Section 53 (relating to cred-  
 2           it for prior year minimum tax liability) is amended  
 3           by adding at the end the following new subsection:  
 4           “(e) ADDITIONAL CREDIT IN LIEU OF BONUS DE-  
 5           PRECIATION.—

6           “(1) IN GENERAL.—In the case of a corpora-  
 7           tion making an election under this subsection for a  
 8           taxable year, the limitation under subsection (c)  
 9           shall be increased by an amount equal to 50 percent  
 10          of the bonus depreciation amount.

11          “(2) BONUS DEPRECIATION AMOUNT.—For  
 12          purposes of paragraph (1), the bonus depreciation  
 13          amount for any taxable year is an amount (not in  
 14          excess of \$25,000,000) equal to the product of—

15               “(A) 30 percent, and

16               “(B) the excess (if any) of—

17                   “(i) the aggregate amount of depre-  
 18                   ciation which would be determined under  
 19                   section 168 for property placed in service  
 20                   during such taxable year if no election  
 21                   under this subsection were made, over

22                   “(ii) the aggregate allowance for de-  
 23                   preciation allowable with respect to such  
 24                   property placed in service for such taxable  
 25                   year.

1           “(3) AGGREGATION RULE.—All members of the  
2           same controlled group of corporations shall be treat-  
3           ed as 1 corporation for purposes of this subsection.

4           “(4) ELECTION.—Sections 168(k) (other than  
5           paragraph (2)(F) thereof) shall not apply to any  
6           property placed in service during a taxable year by  
7           a corporation making an election under this sub-  
8           section for such taxable year. An election under this  
9           subsection may only be revoked with the consent of  
10          the Secretary.

11          “(5) CREDIT REFUNDABLE.—The aggregate in-  
12          crease in the credit allowed by this section for any  
13          taxable year by reason of this subsection shall for  
14          purposes of this title (other than subsection (b)(2)  
15          of this section) be treated as a credit allowed to the  
16          taxpayer under subpart C.”.

17          (2) CONFORMING AMENDMENTS.—Subsection  
18          (k) of section 168 is amended by adding at the end  
19          the following new paragraph:

20          “(5) CROSS REFERENCE.—For an election to  
21          claim certain minimum tax credits in lieu of the al-  
22          lowance determined under this subsection, see sec-  
23          tion 53(e).”.

1           (3) EFFECTIVE DATE.—The amendments made  
 2       by this subsection shall apply to taxable years end-  
 3       ing after December 31, 2003.

4           (b) USE OF GENERAL BUSINESS CREDITS AGAINST  
 5 ALTERNATIVE MINIMUM TAX.—

6           (1) IN GENERAL.—Section 38(c) (relating to  
 7       limitations based on amount of tax) is amended by  
 8       redesignating paragraph (4) as paragraph (5) and  
 9       by inserting after paragraph (3) the following new  
 10      paragraph:

11           “(4) SPECIAL RULE FOR 2004.—Notwith-  
 12      standing the preceding provisions of this paragraph,  
 13      in the case of any taxable year beginning in 2004,  
 14      the credit allowed under subsection (a) shall not ex-  
 15      ceed the greater of—

16           “(A) the amount determined under this  
 17      subsection without regard to this paragraph, or

18           “(B) 50 percent of the lesser of—

19           “(i) the amount which would be deter-  
 20      mined under this subsection if the ten-  
 21      tative minimum tax were treated as being  
 22      zero in applying paragraph (1) to such  
 23      credit, or

24           “(ii) the amount of the current year  
 25      business credit.”.



6 SEC. 631. NEW MARKETS TAX CREDIT FOR NATIVE AMER-  
7 ICAN RESERVATIONS.

13 “SEC. 45E. NEW MARKETS TAX CREDIT FOR NATIVE AMER-  
14 ICAN RESERVATIONS.

“(1) IN GENERAL.—For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the Native American new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the reservation development entity for such investment at its original issue.

1           “(2) APPLICABLE PERCENTAGE.—For purposes  
2 of paragraph (1), the applicable percentage is—

3           “(A) 5 percent with respect to the first 3  
4 credit allowance dates, and

5           “(B) 6 percent with respect to the remain-  
6 der of the credit allowance dates.

7           “(3) CREDIT ALLOWANCE DATE.—For purposes  
8 of paragraph (1), the term ‘credit allowance date’  
9 means, with respect to any qualified equity invest-  
10 ment—

11           “(A) the date on which such investment is  
12 initially made, and

13           “(B) each of the 6 anniversary dates of  
14 such date thereafter.

15           “(b) QUALIFIED EQUITY INVESTMENT.—For pur-  
16 poses of this section—

17           “(1) IN GENERAL.—The term ‘qualified equity  
18 investment’ means any equity investment in a res-  
19 ervation development entity if—

20           “(A) such investment is acquired by the  
21 taxpayer at its original issue (directly or  
22 through an underwriter) solely in exchange for  
23 cash,

24           “(B) substantially all of such cash is used  
25 by the reservation development entity to make

1 qualified low-income reservation investments,  
2 and

3 “(C) such investment is designated for  
4 purposes of this section by the reservation de-  
5 velopment entity.

6 Such term shall not include any equity investment  
7 issued by a reservation development entity more  
8 than 5 years after the date that such entity receives  
9 an allocation under subsection (f). Any allocation  
10 not used within such 5-year period may be reallo-  
11 cated by the Secretary under subsection (f).

12 “(2) LIMITATION.—The maximum amount of  
13 equity investments issued by a reservation develop-  
14 ment entity which may be designated under para-  
15 graph (1)(C) by such entity shall not exceed the por-  
16 tion of the limitation amount allocated under sub-  
17 section (f) to such entity.

18 “(3) SAFE HARBOR FOR DETERMINING USE OF  
19 CASH.—The requirement of paragraph (1)(B) shall  
20 be treated as met if at least 85 percent of the aggre-  
21 gate gross assets of the reservation development en-  
22 tity are invested in qualified low-income reservation  
23 investments.

24 “(4) TREATMENT OF SUBSEQUENT PUR-  
25 CHASERS.—The term ‘qualified equity investment’

1 includes any equity investment which would (but for  
 2 paragraph (1)(A)) be a qualified equity investment  
 3 in the hands of the taxpayer if such investment was  
 4 a qualified equity investment in the hands of a prior  
 5 holder.

6 “(5) REDEMPTIONS.—A rule similar to the rule  
 7 of section 1202(c)(3) shall apply for purposes of this  
 8 subsection.

9 “(6) EQUITY INVESTMENT.—The term ‘equity  
 10 investment’ means—

11 “(A) any stock (other than nonqualified  
 12 preferred stock as defined in section 351(g)(2))  
 13 in an entity which is a corporation, and

14 “(B) any capital interest in an entity  
 15 which is a partnership.

16 “(c) RESERVATION DEVELOPMENT ENTITY.—For  
 17 purposes of this section—

18 “(1) IN GENERAL.—The term ‘reservation de-  
 19 velopment entity’ means any domestic corporation or  
 20 partnership if—

21 “(A) the primary mission of the entity is  
 22 serving, or providing investment capital for,  
 23 low-income reservations,

24 “(B) the entity maintains accountability to  
 25 residents of low-income reservations through

1           their representation on any governing board of  
2           the entity or on any advisory board to the enti-  
3           ty, and

4                 “(C) the entity is certified by the Secretary  
5           for purposes of this section as being a reserva-  
6           tion development entity.

7                 “(2) EXCEPTION.—For purposes of subpara-  
8           graph (C) of paragraph (1), the Secretary shall not  
9           certify an entity as a reservation development entity  
10          if such entity is also certified as a qualified commu-  
11          nity development entity under section 45D(c).

12          “(d) QUALIFIED LOW-INCOME RESERVATION IN-  
13          VESTMENTS.—For purposes of this section—

14                 “(1) IN GENERAL.—The term ‘qualified low-in-  
15          come reservation investment’ means—

16                         “(A) any capital or equity investment in,  
17                         or loan to, any qualified active low-income res-  
18                         ervation business,

19                         “(B) the purchase from another reserva-  
20                         tion development entity of any loan made by  
21                         such entity which is a qualified low-income res-  
22                         ervation investment,

23                         “(C) financial counseling and other serv-  
24                         ices specified in regulations prescribed by the

1 Secretary to businesses located in, and resi-  
2 dents of, low-income reservations, and

3 “(D) any equity investment in, or loan to,  
4 any reservation development entity.

5 “(2) QUALIFIED ACTIVE LOW-INCOME RES-  
6 ERVATION BUSINESS.—

7 “(A) IN GENERAL.—For purposes of para-  
8 graph (1), the term ‘qualified active low-income  
9 reservation business’ means, with respect to any  
10 taxable year, any corporation (including a non-  
11 profit corporation) or partnership if for such  
12 year—

13 “(i) at least 50 percent of the total  
14 gross income of such entity is derived from  
15 the active conduct of a qualified business  
16 within any low-income reservation,

17 “(ii) a substantial portion of the use  
18 of the tangible property of such entity  
19 (whether owned or leased) is within any  
20 low-income reservation,

21 “(iii) a substantial portion of the serv-  
22 ices performed for such entity by its em-  
23 ployees are performed in any low-income  
24 reservation,

1           “(iv) less than 5 percent of the aver-  
2           age of the aggregate unadjusted bases of  
3           the property of such entity is attributable  
4           to collectibles (as defined in section  
5           408(m)(2)) other than collectibles that are  
6           held primarily for sale to customers in the  
7           ordinary course of such business, and

8           “(v) less than 5 percent of the aver-  
9           age of the aggregate unadjusted bases of  
10          the property of such entity is attributable  
11          to nonqualified financial property (as de-  
12          fined in section 1397C(e)).

13          “(B) PROPRIETORSHIP.—Such term shall  
14          include any business carried on by an individual  
15          as a proprietor if such business would meet the  
16          requirements of subparagraph (A) were it incor-  
17          porated.

18          “(C) PORTIONS OF BUSINESS MAY BE  
19          QUALIFIED ACTIVE LOW-INCOME RESERVATION  
20          BUSINESS.—The term ‘qualified active low-in-  
21          come reservation business’ includes any trades  
22          or businesses which would qualify as a qualified  
23          active low-income reservation business if such  
24          trades or businesses were separately incor-  
25          porated.

1           “(3) QUALIFIED BUSINESS.—For purposes of  
 2           this subsection, the term ‘qualified business’ has the  
 3           meaning given to such term by section 45D(d)(3).

4           “(e) LOW-INCOME RESERVATION.—For purposes of  
 5           this section, the term ‘low-income reservation’ means any  
 6           Indian reservation (as defined in section 168(j)(6)) which  
 7           has a poverty rate of at least 40 percent.

8           “(f) NATIONAL LIMITATION ON AMOUNT OF INVEST-  
 9           MENTS DESIGNATED.—

10           “(1) IN GENERAL.—There is a Native American  
 11           new markets tax credit limitation of \$50,000,000 for  
 12           each of calendar years 2004 through 2007.

13           “(2) ALLOCATION OF LIMITATION.—The limita-  
 14           tion under paragraph (1) shall be allocated by the  
 15           Secretary among reservation development entities se-  
 16           lected by the Secretary. In making allocations under  
 17           the preceding sentence, the Secretary shall give pri-  
 18           ority to any entity—

19                   “(A) with a record of having successfully  
 20                   provided capital or technical assistance to dis-  
 21                   advantaged businesses or communities, or

22                   “(B) which intends to satisfy the require-  
 23                   ment under subsection (b)(1)(B) by making  
 24                   qualified low-income reservation investments in  
 25                   1 or more businesses in which persons unre-



1           lated to such entity (within the meaning of sec-  
 2           tion 267(b) or 707(b)(1)) hold the majority eq-  
 3           uity interest.

4           “(3) CARRYOVER OF UNUSED LIMITATION.—If  
 5           the Native American new markets tax credit limita-  
 6           tion for any calendar year exceeds the aggregate  
 7           amount allocated under paragraph (2) for such year,  
 8           such limitation for the succeeding calendar year  
 9           shall be increased by the amount of such excess. No  
 10          amount may be carried under the preceding sentence  
 11          to any calendar year after 2014.

12          “(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

13               “(1) IN GENERAL.—If, at any time during the  
 14               7-year period beginning on the date of the original  
 15               issue of a qualified equity investment in a reserva-  
 16               tion development entity, there is a recapture event  
 17               with respect to such investment, then the tax im-  
 18               posed by this chapter for the taxable year in which  
 19               such event occurs shall be increased by the credit re-  
 20               capture amount.

21               “(2) CREDIT RECAPTURE AMOUNT.—For pur-  
 22               poses of paragraph (1), the credit recapture amount  
 23               is an amount equal to the sum of—

24                       “(A) the aggregate decrease in the credits  
 25                       allowed to the taxpayer under section 38 for all

1 prior taxable years which would have resulted if  
2 no credit had been determined under this sec-  
3 tion with respect to such investment, plus

4 “(B) interest at the underpayment rate es-  
5 tablished under section 6621 on the amount de-  
6 termined under subparagraph (A) for each  
7 prior taxable year for the period beginning on  
8 the due date for filing the return for the prior  
9 taxable year involved.

10 No deduction shall be allowed under this chapter for  
11 interest described in subparagraph (B).

12 “(3) RECAPTURE EVENT.—For purposes of  
13 paragraph (1), there is a recapture event with re-  
14 spect to an equity investment in a reservation devel-  
15 opment entity if—

16 “(A) such entity ceases to be a reservation  
17 development entity,

18 “(B) the proceeds of the investment cease  
19 to be used as required of subsection (b)(1)(B),  
20 or

21 “(C) such investment is redeemed by such  
22 entity.

23 “(4) SPECIAL RULES.—

24 “(A) TAX BENEFIT RULE.—The tax for  
25 the taxable year shall be increased under para-

1 graph (1) only with respect to credits allowed  
2 by reason of this section which were used to re-  
3 duce tax liability. In the case of credits not so  
4 used to reduce tax liability, the carryforwards  
5 and carrybacks under section 39 shall be appro-  
6 priately adjusted.

7 “(B) NO CREDITS AGAINST TAX.—Any in-  
8 crease in tax under this subsection shall not be  
9 treated as a tax imposed by this chapter for  
10 purposes of determining the amount of any  
11 credit under this chapter or for purposes of sec-  
12 tion 55.

13 “(h) BASIS REDUCTION.—The basis of any qualified  
14 equity investment shall be reduced by the amount of any  
15 credit determined under this section with respect to such  
16 investment. This subsection shall not apply for purposes  
17 of sections 1202, 1400B, and 1400F.

18 “(i) REGULATIONS.—The Secretary shall prescribe  
19 such regulations as may be appropriate to carry out this  
20 section, including regulations—

21 “(1) which limit the credit for investments  
22 which are directly or indirectly subsidized by other  
23 Federal tax benefits (including the credit under sec-  
24 tion 42 and the exclusion from gross income under  
25 section 103),

1           “(2) which prevent the abuse of the purposes of  
2       this section,

3           “(3) which provide rules for determining wheth-  
4       er the requirement of subsection (b)(1)(B) is treated  
5       as met,

6           “(4) which impose appropriate reporting re-  
7       quirements, and

8           “(5) which apply the provisions of this section  
9       to newly formed entities.”.

10       (b) CREDIT MADE PART OF GENERAL BUSINESS  
11 CREDIT.—

12           (1) IN GENERAL.—Subsection (b) of section 38  
13       is amended by redesignating paragraphs (14) and  
14       (15) as paragraphs (15) and (16), respectively, and  
15       by inserting after paragraph (13) the following new  
16       paragraph:

17           “(14) the Native American new markets tax  
18       credit determined under section 45E(a),”.

19           (2) LIMITATION ON CARRYBACK.—Subsection  
20       (d) of section 39 is amended by redesignating para-  
21       graph (10) as paragraph (11) and by inserting after  
22       paragraph (9) the following new paragraph:

23           “(10) NO CARRYBACK OF NATIVE AMERICAN  
24       NEW MARKETS TAX CREDIT BEFORE JANUARY 1,  
25       2004.—No portion of the unused business credit for

1       any taxable year which is attributable to the credit  
2       under section 45E may be carried back to a taxable  
3       year ending before January 1, 2004.”.

4       (c) DEDUCTION FOR UNUSED CREDIT.—Subsection  
5       (c) of section 196 is amended by redesignating paragraph  
6       (10) as paragraph (11), by striking “and” at the end of  
7       paragraph (9), and by inserting after paragraph (9) the  
8       following new paragraph:

9               “(10) the Native American new markets tax  
10       credit determined under section 45E(a), and”.

11       (d) CONFORMING AMENDMENTS.—

12               (1) Section 38(b)(15), as redesignated by sub-  
13       section (b)(1), is amended—

14                       (A) by striking “45E(c)” and inserting  
15               “45F(c)”, and

16                       (B) by striking “45E(a)” and inserting  
17               “45F(a)”.

18               (2) Section 38(b)(16), as redesignated by sub-  
19       section (b)(1), is amended by striking “45F(a)” and  
20       inserting “45G(a)”.

21               (3) Section 39(d)(11), as redesignated by sub-  
22       section (b)(2), is amended by striking “section 45E”  
23       and inserting “section 45F”.

5 (A) by striking “under section 45F” and  
6 inserting “under section 45G”, and

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by striking the items relating to sections 45E and 45F and inserting the following:

“Sec. 45G. Employer-provided child care credit.”.

(f) GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

(1) how entities shall apply for an allocation under section 45E(f)(2) of the Internal Revenue Code of 1986, as added by this section;

1           (2) the competitive procedure through which  
2           such allocations are made; and

3           (3) the actions that such Secretary or delegate  
4           shall take to ensure that such allocations are prop-  
5           erly made to appropriate entities.

6           (g) AUDIT AND REPORT.—Not later than January 31  
7           of 2007 and 2010, the Comptroller General of the United  
8           States shall, pursuant to an audit of the Native American  
9           new markets tax credit program established under section  
10          45E of the Internal Revenue Code of 1986 (as added by  
11          subsection (a)), report to Congress on such program, in-  
12          cluding all reservation development entities that receive an  
13          allocation under the Native American new markets credit  
14          under such section.

15          (h) GRANTS IN COORDINATION WITH CREDIT.—

16                (1) IN GENERAL.—The Secretary of the Treas-  
17                ury is authorized to award a grant of not more than  
18                \$1,000,000 to the First Nations Oweesta Corpora-  
19                tion.

20                (2) USE OF FUNDS.—The grant awarded under  
21                paragraph (1) may be used—

22                      (A) to enhance the capacity of people living  
23                      on low-income reservations (within the meaning  
24                      of section 45E(e) of the Internal Revenue Code  
25                      of 1986, as added by this section) to access,

1           apply, control, create, leverage, utilize, and re-  
 2           tain the financial benefits to such low-income  
 3           reservations which are attributable to qualified  
 4           low-income reservation investments (within the  
 5           meaning of section 45E(d) of such Code), and

6                   (B) to provide access to appropriate finan-  
 7           cial capital for the development of such low-in-  
 8           come reservations.

9           (3) AUTHORIZATION OF APPROPRIATIONS.—

10          There are authorized to be appropriated \$1,000,000  
 11          for fiscal years 2004 through 2014 to carry out the  
 12          provisions of this subsection.

13 **SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE**  
 14                   **CREDIT AND READY RESERVE-NATIONAL**  
 15                   **GUARD REPLACEMENT EMPLOYEE CREDIT.**

16          (a) READY RESERVE-NATIONAL GUARD CREDIT.—

17                   (1) IN GENERAL.—Subpart D of part IV of  
 18          subchapter A of chapter 1 (relating to business-re-  
 19          lated credits), as amended by this Act, is amended  
 20          by adding at the end the following:

21 **“SEC. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE**  
 22                   **CREDIT.**

23                   “(a) GENERAL RULE.—For purposes of section 38,  
 24          the Ready Reserve-National Guard employee credit deter-  
 25          mined under this section for any taxable year with respect



1 to each Ready Reserve-National Guard employee of an em-  
2 ployer is an amount equal to 50 percent of the lesser of—

3 “(1) the actual compensation amount with re-  
4 spect to such employee for such taxable year, or

5 “(2) \$30,000.

6 “(b) DEFINITION OF ACTUAL COMPENSATION  
7 AMOUNT.—For purposes of this section, the term ‘actual  
8 compensation amount’ means the amount of compensation  
9 paid or incurred by an employer with respect to a Ready  
10 Reserve-National Guard employee on any day when the  
11 employee was absent from employment for the purpose of  
12 performing qualified active duty.

13 “(c) LIMITATIONS.—No credit shall be allowed with  
14 respect to any day that a Ready Reserve-National Guard  
15 employee who performs qualified active duty was not  
16 scheduled to work (for reason other than to participate  
17 in qualified active duty).

18 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
19 poses of this section—

20 “(1) QUALIFIED ACTIVE DUTY.—The term  
21 ‘qualified active duty’ means—

22 “(A) active duty, other than the training  
23 duty specified in section 10147 of title 10,  
24 United States Code (relating to training re-  
25 quirements for the Ready Reserve), or section

1           502(a) of title 32, United States Code (relating  
2           to required drills and field exercises for the Na-  
3           tional Guard), in connection with which an em-  
4           ployee is entitled to reemployment rights and  
5           other benefits or to a leave of absence from em-  
6           ployment under chapter 43 of title 38, United  
7           States Code, and

8           “(B) hospitalization incident to such duty.

9           “(2) COMPENSATION.—The term ‘compensa-  
10          tion’ means any remuneration for employment,  
11          whether in cash or in kind, which is paid or incurred  
12          by a taxpayer and which is deductible from the tax-  
13          payer’s gross income under section 162(a)(1).

14          “(3) READY RESERVE-NATIONAL GUARD EM-  
15          PLOYEE.—The term ‘Ready Reserve-National Guard  
16          employee’ means an employee who is a member of  
17          the Ready Reserve of a reserve component of an  
18          Armed Force of the United States as described in  
19          sections 10142 and 10101 of title 10, United States  
20          Code.

21          “(4) CERTAIN RULES TO APPLY.—Rules similar  
22          to the rules of section 52 shall apply.

23          “(e) PORTION OF CREDIT REFUNDABLE.—

24          “(1) IN GENERAL.—In the case of an employer  
25          of a qualified first responder, the aggregate credits

1       allowed to a taxpayer under subpart C shall be in-  
2       creased by the lesser of—

3               “(A) the credit which would be allowed  
4               under this section without regard to this sub-  
5               section and the limitation under section 38(c),  
6               or

7               “(B) the amount by which the aggregate  
8               amount of credits allowed by this subpart (de-  
9               termined without regard to this subsection)  
10              would increase if the limitation imposed by sec-  
11              tion 38(c) for any taxable year were increased  
12              by the amount of employer payroll taxes im-  
13              posed on the taxpayer during the calendar year  
14              in which the taxable year begins.

15       The amount of the credit allowed under this sub-  
16       section shall not be treated as a credit allowed under  
17       this subpart and shall reduce the amount of the  
18       credit otherwise allowable under subsection (a) with-  
19       out regard to section 38(c).

20               “(2) EMPLOYER PAYROLL TAXES.—For pur-  
21       poses of this subsection—

22               “(A) IN GENERAL.—The term ‘employer  
23               payroll taxes’ means the taxes imposed by—

24               “(i) section 3111(b), and

1                   “(ii) sections 3211(a) and 3221(a)  
2                   (determined at a rate equal to the rate  
3                   under section 3111(b)).

4                   “(B) SPECIAL RULE.—A rule similar to  
5                   the rule of section 24(d)(2)(C) shall apply for  
6                   purposes of subparagraph (A).

7                   “(3) QUALIFIED FIRST RESPONDER.—For pur-  
8                   poses of this subsection, the term ‘qualified first re-  
9                   sponder’ means any person who is—

10                   “(A) employed as a law enforcement offi-  
11                   cial, a firefighter, or a paramedic, and

12                   “(B) a Ready Reserve-National Guard em-  
13                   ployee.”.

14                   (2) CREDIT TO BE PART OF GENERAL BUSI-  
15                   NESS CREDIT.—Subsection (b) of section 38 (relat-  
16                   ing to general business credit), as amended by this  
17                   Act, is amended by striking “plus” at the end of  
18                   paragraph (15), by striking the period at the end of  
19                   paragraph (16) and inserting “, plus”, and by add-  
20                   ing at the end the following:

21                   “(17) the Ready Reserve-National Guard em-  
22                   ployee credit determined under section 45H(a).”.

23                   (3) DENIAL OF DOUBLE BENEFIT.—Section  
24                   280C(a) (relating to rule for employment credits) is  
25                   amended by inserting “45H(a),” after “45A(a),”.

1 (4) CONFORMING AMENDMENT.—The table of  
 2 sections for subpart D of part IV of subchapter A  
 3 of chapter 1, as amended by this Act, is amended  
 4 by inserting after the item relating to section 45G  
 5 the following:

“Sec. 45H. Ready Reserve-National Guard employee credit.”.

6 (5) EFFECTIVE DATE.—The amendments made  
 7 by this subsection shall apply to amounts paid or in-  
 8 curred after September 30, 2004, in taxable years  
 9 ending after such date.

10 (b) READY RESERVE-NATIONAL GUARD REPLACE-  
 11 MENT EMPLOYEE CREDIT.—

12 (1) IN GENERAL.—Subpart B of part IV of  
 13 subchapter A of chapter 1 (relating to foreign tax  
 14 credit, etc.), as amended by this Act, is amended by  
 15 adding after section 30C the following new section:

16 **“SEC. 30D. READY RESERVE-NATIONAL GUARD REPLACE-**  
 17 **MENT EMPLOYEE CREDIT.**

18 “(a) ALLOWANCE OF CREDIT.—

19 “(1) IN GENERAL.—In the case of an eligible  
 20 taxpayer, there shall be allowed as a credit against  
 21 the tax imposed by this chapter for the taxable year  
 22 the sum of the employment credits for each qualified  
 23 replacement employee under this section.

24 “(2) EMPLOYMENT CREDIT.—The employment  
 25 credit with respect to a qualified replacement em-

1        ployee of the taxpayer for any taxable year is equal  
2        to 50 percent of the lesser of—

3                “(A) the individual’s qualified compensa-  
4                tion attributable to service rendered as a quali-  
5                fied replacement employee, or

6                “(B) \$12,000.

7        “(b) QUALIFIED COMPENSATION.—The term ‘quali-  
8        fied compensation’ means—

9                “(1) compensation which is normally contingent  
10              on the qualified replacement employee’s presence for  
11              work and which is deductible from the taxpayer’s  
12              gross income under section 162(a)(1),

13              “(2) compensation which is not characterized  
14              by the taxpayer as vacation or holiday pay, or as  
15              sick leave or pay, or as any other form of pay for  
16              a nonspecific leave of absence, and

17              “(3) group health plan costs (if any) with re-  
18              spect to the qualified replacement employee.

19        “(c) QUALIFIED REPLACEMENT EMPLOYEE.—For  
20        purposes of this section—

21              “(1) IN GENERAL.—The term ‘qualified re-  
22              placement employee’ means an individual who is  
23              hired to replace a Ready Reserve-National Guard  
24              employee or a Ready Reserve-National Guard self-  
25              employed taxpayer, but only with respect to the pe-

1        riod during which such Ready Reserve-National  
 2        Guard employee or Ready Reserve-National Guard  
 3        self-employed taxpayer participates in qualified ac-  
 4        tive duty, including time spent in travel status.

5            “(2) READY RESERVE-NATIONAL GUARD EM-  
 6        PLOYEE.—The term ‘Ready Reserve-National Guard  
 7        employee’ has the meaning given such term by sec-  
 8        tion 45H(d)(3).

9            “(3) READY RESERVE-NATIONAL GUARD SELF-  
 10       EMPLOYED TAXPAYER.—The term ‘Ready Reserve-  
 11       National Guard self-employed taxpayer’ means a  
 12       taxpayer who—

13            “(A) has net earnings from self-employ-  
 14       ment (as defined in section 1402(a)) for the  
 15       taxable year, and

16            “(B) is a member of the Ready Reserve of  
 17       a reserve component of an Armed Force of the  
 18       United States as described in section 10142  
 19       and 10101 of title 10, United States Code.

20        “(d) COORDINATION WITH OTHER CREDITS.—The  
 21       amount of credit otherwise allowable under sections 51(a)  
 22       and 1396(a) with respect to any employee shall be reduced  
 23       by the credit allowed by this section with respect to such  
 24       employee.

25        “(e) LIMITATIONS.—

1           “(1) APPLICATION WITH OTHER CREDITS.—

2           The credit allowed under subsection (a) for any tax-  
3           able year shall not exceed the excess (if any) of—

4                   “(A) the regular tax for the taxable year  
5                   reduced by the sum of the credits allowable  
6                   under subpart A and sections 27, 29, and 30,  
7                   over

8                   “(B) the tentative minimum tax for the  
9                   taxable year.

10           “(2) DISALLOWANCE FOR FAILURE TO COMPLY  
11           WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF  
12           MEMBERS OF THE RESERVE COMPONENTS OF THE  
13           ARMED FORCES OF THE UNITED STATES.—No credit  
14           shall be allowed under subsection (a) to a taxpayer  
15           for—

16                   “(A) any taxable year, beginning after the  
17                   date of the enactment of this section, in which  
18                   the taxpayer is under a final order, judgment,  
19                   or other process issued or required by a district  
20                   court of the United States under section 4323  
21                   of title 38 of the United States Code with re-  
22                   spect to a violation of chapter 43 of such title,  
23                   and

24                   “(B) the 2 succeeding taxable years.



1       “(f) GENERAL DEFINITIONS AND SPECIAL RULES.—

2       For purposes of this section—

3               “(1) ELIGIBLE TAXPAYER.—The term ‘eligible  
4       taxpayer’ means a small business employer or a  
5       Ready Reserve-National Guard self-employed tax-  
6       payer.

7               “(2) SMALL BUSINESS EMPLOYER.—

8                       “(A) IN GENERAL.—The term ‘small busi-  
9       ness employer’ means, with respect to any tax-  
10      able year, any employer who employed an aver-  
11      age of 50 or fewer employees on business days  
12      during such taxable year.

13                  “(B) CONTROLLED GROUPS.—For pur-  
14      poses of subparagraph (A), all persons treated  
15      as a single employer under subsection (b), (c),  
16      (m), or (o) of section 414 shall be treated as a  
17      single employer.

18               “(3) QUALIFIED ACTIVE DUTY.—The term  
19      ‘qualified active duty’ has the meaning given such  
20      term by section 45H(d)(1).

21               “(4) SPECIAL RULES FOR CERTAIN MANUFAC-  
22      TURERS.—

23                       “(A) IN GENERAL.—In the case of any  
24      qualified manufacturer—

1 “(i) subsection (a)(2)(B) shall be ap-  
 2 plied by substituting ‘\$20,000’ for  
 3 ‘\$12,000’, and

4 “(ii) paragraph (2)(A) of this sub-  
 5 section shall be applied by substituting  
 6 ‘100’ for ‘50’.

7 “(B) QUALIFIED MANUFACTURER.—For  
 8 purposes of this paragraph, the term ‘qualified  
 9 manufacturer’ means any person if—

10 “(i) the primary business of such per-  
 11 son is classified in sector 31, 32, or 33 of  
 12 the North American Industrial Classifica-  
 13 tion System, and

14 “(ii) all of such person’s facilities  
 15 which are used for production in such busi-  
 16 ness are located in the United States.

17 “(5) CARRYBACK AND CARRYFORWARD AL-  
 18 LOWED.—

19 “(A) IN GENERAL.—If the credit allowable  
 20 under subsection (a) for a taxable year exceeds  
 21 the amount of the limitation under subsection  
 22 (e)(1) for such taxable year (in this paragraph  
 23 referred to as the ‘unused credit year’), such  
 24 excess shall be a credit carryback to each of the  
 25 3 taxable years preceding the unused credit

1           year and a credit carryforward to each of the  
 2           20 taxable years following the unused credit  
 3           year.

4           “(B) RULES.—Rules similar to the rules of  
 5           section 39 shall apply with respect to the credit  
 6           carryback and credit carryforward under sub-  
 7           paragraph (A).

8           “(6) CERTAIN RULES TO APPLY.—Rules similar  
 9           to the rules of subsections (c), (d), and (e) of section  
 10          52 shall apply.”.

11          (2) NO DEDUCTION FOR COMPENSATION TAKEN  
 12          INTO ACCOUNT FOR CREDIT.—Section 280C(a) (re-  
 13          lating to rule for employment credits), as amended  
 14          by this Act, is amended—

15                 (A) by inserting “or compensation” after  
 16                 “salaries”, and

17                 (B) by inserting “30D,” before “45A(a),”.

18          (3)     CONFORMING     AMENDMENT.—Section  
 19          55(c)(2), as amended by this Act, is amended by in-  
 20          serting “30D(e)(1),” after “30C(e),”.

21          (4) CLERICAL AMENDMENT.—The table of sec-  
 22          tions for subpart B of part IV of subchapter A of  
 23          chapter 1, as amended by this Act, is amended by  
 24          adding after the item relating to section 30C the fol-  
 25          lowing new item:

“Sec. 30D. Credit for replacement of activated military reservists.”.

1           (5) EFFECTIVE DATE.—The amendments made  
2           by this subsection shall apply to amounts paid or in-  
3           curred after September 30, 2004, in taxable years  
4           ending after such date.

5           (c) APPLICATION OF ANNUAL EXCLUSION LIMIT  
6           UNDER SECTION 911 TO HOUSING COSTS.—

7           (1) IN GENERAL.—Section 911(c) (relating to  
8           housing cost amount) is amended by adding at the  
9           end the following new paragraph:

10           “(4) LIMIT ON EXCLUSION FOR EMPLOYER  
11           PROVIDED HOUSING COSTS.—The housing cost  
12           amount for any individual for any taxable year at-  
13           tributable to employer provided amounts shall not  
14           exceed the excess (if any) of—

15           “(A) the product of—

16           “(i) the exclusion amount determined  
17           under subsection (b)(2)(D) for the taxable  
18           year, and

19           “(ii) a fraction equal to the number of  
20           days of the taxable year within the applica-  
21           ble period described in subparagraph (A)  
22           or (B) of subsection (d)(1) divided by the  
23           number of days in the taxable year, over

1           “(B) the foreign earned income of the indi-  
 2           vidual excluded under subsection (a)(1) for the  
 3           taxable year.”

4           (2)     CONFORMING     AMENDMENT.—Section  
 5           911(c)(1) is amended by striking “The” and insert-  
 6           ing “Except as provided in paragraph (4), the”.

7           (3) EFFECTIVE DATE.—The amendments made  
 8           by this subsection shall apply to taxable years begin-  
 9           ning after December 31, 2003.

10   **SEC. 633. RURAL INVESTMENT TAX CREDIT.**

11       (a) IN GENERAL.—Subpart D of part IV of sub-  
 12   chapter A of chapter 1 (relating to business related cred-  
 13   its) is amended by adding at the end the following:

14   **“SEC. 42A. RURAL INVESTMENT CREDIT.**

15       “(a) IN GENERAL.—For purposes of section 38, the  
 16   amount of the rural investment credit determined under  
 17   this section for any taxable year in the credit period shall  
 18   be an amount equal to the applicable percentage of the  
 19   eligible basis of each qualified rural investment building.

20       “(b)   APPLICABLE   PERCENTAGE:   70   PERCENT  
 21   PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PER-  
 22   CENT PRESENT VALUE CREDIT FOR EXISTING BUILD-  
 23   INGS.—For purposes of this section—

1           “(1) IN GENERAL.—The term ‘applicable per-  
 2           centage’ means the appropriate percentage pre-  
 3           scribed by the Secretary for the earlier of—

4                   “(A) the first month of the credit period  
 5                   with respect to a rural investment building, or

6                   “(B) at the election of the taxpayer, the  
 7                   month in which the taxpayer and the rural in-  
 8                   vestment credit agency enter into an agreement  
 9                   with respect to such building (which is binding  
 10                  on such agency, the taxpayer, and all successors  
 11                  in interest) as to the rural investment credit  
 12                  dollar amount to be allocated to such building.

13           A month may be elected under subparagraph (B)  
 14           only if the election is made not later than the 5th  
 15           day after the close of such month. Such an election,  
 16           once made, shall be irrevocable.

17           “(2) METHOD OF PRESCRIBING PERCENT-  
 18           AGES.—The percentages prescribed by the Secretary  
 19           for any month shall be percentages which will yield  
 20           over a 10-year period amounts of credit under sub-  
 21           section (a) which have a present value equal to—

22                   “(A) 70 percent of the eligible basis of a  
 23                   new building, and

24                   “(B) 30 percent of the eligible basis of an  
 25                   existing building.

1           “(3) METHOD OF DISCOUNTING.—The present  
2       value under paragraph (2) shall be determined—

3           “(A) as of the last day of the 1st year of  
4       the 10-year period referred to in paragraph (2),

5           “(B) by using a discount rate equal to 72  
6       percent of the average of the annual Federal  
7       mid-term rate and the annual Federal long-  
8       term rate applicable under section 1274(d)(1)  
9       to the month applicable under subparagraph  
10      (A) or (B) of paragraph (1) and compounded  
11      annually, and

12          “(C) by assuming that the credit allowable  
13      under this section for any year is received on  
14      the last day of such year.

15      “(c) ELIGIBLE BASIS; QUALIFIED RURAL INVEST-  
16      MENT BUILDING.—For purposes of this section—

17          “(1) ELIGIBLE BASIS.—

18              “(A) IN GENERAL.—The eligible basis of  
19      any qualified rural investment building for any  
20      taxable year shall be determined under rules  
21      similar to the rules under section 42(d), except  
22      that—

23              “(i) the determination of the adjusted  
24      basis of any building shall be made as of  
25      the beginning of the credit period, and

1 “(ii) such basis shall include develop-  
 2 ment costs properly attributable to such  
 3 building.

4 “(B) DEVELOPMENT COSTS.—For pur-  
 5 poses of subparagraph (A)(ii), the term ‘devel-  
 6 opment costs’ includes—

7 “(i) site preparation costs,

8 “(ii) State and local impact fees,

9 “(iii) reasonable development costs,

10 “(iv) professional fees related to basis  
 11 items,

12 “(v) construction financing costs re-  
 13 lated to basis items other than land, and

14 “(vi) on-site and adjacent improve-  
 15 ments required by State and local govern-  
 16 ments.

17 “(2) QUALIFIED RURAL INVESTMENT BUILD-  
 18 ING.—The term ‘qualified rural investment building’  
 19 means any building which is part of a qualified rural  
 20 investment project at all times during the period—

21 “(A) beginning on the 1st day in the com-  
 22 pliance period on which such building is part of  
 23 such an investment project, and

24 “(B) ending on the last day of the compli-  
 25 ance period with respect to such building.



1       “(d) REHABILITATION EXPENDITURES TREATED AS  
 2 SEPARATE NEW BUILDING.—Rehabilitation expenditures  
 3 paid or incurred by the taxpayer with respect to any build-  
 4 ing shall be treated for purposes of this section as a sepa-  
 5 rate new building under the rules of section 42(e).

6       “(e) DEFINITION AND SPECIAL RULES RELATING TO  
 7 CREDIT PERIOD.—

8               “(1) CREDIT PERIOD DEFINED.—For purposes  
 9 of this section, the term ‘credit period’ means, with  
 10 respect to any building, the period of 10 taxable  
 11 years beginning with the taxable year in which the  
 12 building is first placed in service.

13              “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT  
 14 PERIOD.—

15              “(A) IN GENERAL.—The credit allowable  
 16 under subsection (a) with respect to any build-  
 17 ing for the 1st taxable year of the credit period  
 18 shall be determined by multiplying such credit  
 19 by the fraction—

20                      “(i) the numerator of which is the  
 21 number of full months of such year during  
 22 which such building was in service, and

23                      “(ii) the denominator of which is 12.

24              “(B) DISALLOWED 1ST YEAR CREDIT AL-  
 25 LOWED IN 11TH YEAR.—Any reduction by rea-

1 son of subparagraph (A) in the credit allowable  
 2 (without regard to subparagraph (A)) for the  
 3 1st taxable year of the credit period shall be al-  
 4 lowable under subsection (a) for the 1st taxable  
 5 year following the credit period.

6 “(3) CREDIT PERIOD FOR EXISTING BUILDINGS  
 7 NOT TO BEGIN BEFORE REHABILITATION CREDIT  
 8 ALLOWED.—The credit period for an existing build-  
 9 ing shall not begin before the 1st taxable year of the  
 10 credit period for rehabilitation expenditures with re-  
 11 spect to the building.

12 “(f) QUALIFIED RURAL INVESTMENT PROJECT;  
 13 QUALIFYING COUNTY.—For purposes of this section—

14 “(1) QUALIFIED RURAL INVESTMENT  
 15 PROJECT.—The term ‘qualified rural investment  
 16 project’ means any investment project of 1 or more  
 17 qualified rural investment buildings located in a  
 18 qualifying county (and, if necessary to the project,  
 19 any contiguous county) and selected by the State ac-  
 20 cording to its qualified rural investment plan.

21 “(2) QUALIFYING COUNTY.—The term ‘quali-  
 22 fying county’ means any county which—

23 “(A) is outside a metropolitan statistical  
 24 area (defined as such by the Office of Manage-  
 25 ment and Budget), and

1           “(B) during the 20-year period ending  
2           with the year in which the most recent census  
3           was conducted, has a net out-migration of in-  
4           habitants from the county of at least 10 percent  
5           of the population of the county at the beginning  
6           of such period.

7           “(g) LIMITATION ON AGGREGATE CREDIT ALLOW-  
8   ABLE WITH RESPECT TO INVESTMENT PROJECTS LO-  
9   CATED IN A STATE.—

10           “(1) CREDIT MAY NOT EXCEED CREDIT  
11   AMOUNT ALLOCATED TO BUILDING.—The amount of  
12   the credit determined under this section for any tax-  
13   able year with respect to any building shall not ex-  
14   ceed the rural investment credit dollar amount allo-  
15   cated to such building under rules similar to the  
16   rules of section 42(h)(1).

17           “(2) ALLOCATED CREDIT AMOUNT TO APPLY  
18   TO ALL TAXABLE YEARS ENDING DURING OR AFTER  
19   CREDIT ALLOCATION YEAR.—Any rural investment  
20   credit dollar amount allocated to any building for  
21   any calendar year—

22           “(A) shall apply to such building for all  
23   taxable years in the credit period ending during  
24   or after such calendar year, and

1           “(B) shall reduce the aggregate rural in-  
2           vestment credit dollar amount of the allocating  
3           agency only for such calendar year.

4           “(3) RURAL INVESTMENT CREDIT DOLLAR  
5           AMOUNT FOR AGENCIES.—

6           “(A) IN GENERAL.—The aggregate rural  
7           investment credit dollar amount which a rural  
8           investment credit agency may allocate for any  
9           calendar year is the portion of the State rural  
10          investment credit ceiling allocated under this  
11          paragraph for such calendar year to such agen-  
12          cy.

13          “(B) STATE CEILING INITIALLY ALLO-  
14          CATED TO STATE RURAL INVESTMENT CREDIT  
15          AGENCIES.—Except as provided in subpara-  
16          graphs (D) and (E), the State rural investment  
17          credit ceiling for each calendar year shall be al-  
18          located to the rural investment credit agency of  
19          such State. If there is more than 1 rural invest-  
20          ment credit agency of a State, all such agencies  
21          shall be treated as a single agency.

22          “(C) STATE RURAL INVESTMENT CREDIT  
23          CEILING.—The State rural investment credit  
24          ceiling applicable to any State and any calendar  
25          year shall be an amount equal to the sum of—

1 “(i) the unused State rural investment  
2 credit ceiling (if any) of such State for the  
3 preceding calendar year,

4 “(ii) \$185,000 for each qualifying  
5 county in the State,

6 “(iii) the amount of State rural in-  
7 vestment credit ceiling returned in the cal-  
8 endar year, plus

9 “(iv) the amount (if any) allocated  
10 under subparagraph (D) to such State by  
11 the Secretary.

12 For purposes of clause (i), the unused State  
13 rural investment credit ceiling for any calendar  
14 year is the excess (if any) of the sum of the  
15 amounts described in clauses (ii) through (iv)  
16 over the aggregate rural investment credit dol-  
17 lar amount allocated for such year. For pur-  
18 poses of clause (iii), the amount of State rural  
19 investment credit ceiling returned in the cal-  
20 endar year equals the rural investment credit  
21 dollar amount previously allocated within the  
22 State to any investment project which fails to  
23 meet the 10 percent test under section  
24 42(h)(1)(E)(ii) on a date after the close of the  
25 calendar year in which the allocation was made

1 or which does not become a qualified rural in-  
 2 vestment project within the period required by  
 3 this section or the terms of the allocation or to  
 4 any investment project with respect to which an  
 5 allocation is canceled by mutual consent of the  
 6 rural investment credit agency and the alloca-  
 7 tion recipient.

8 “(D) UNUSED RURAL INVESTMENT CREDIT  
 9 CARRYOVERS ALLOCATED AMONG CERTAIN  
 10 STATES.—

11 “(i) IN GENERAL.—The unused rural  
 12 investment credit carryover of a State for  
 13 any calendar year shall be assigned to the  
 14 Secretary for allocation among qualified  
 15 States for the succeeding calendar year.

16 “(ii) UNUSED RURAL INVESTMENT  
 17 CREDIT CARRYOVER.—For purposes of this  
 18 subparagraph, the unused rural investment  
 19 credit carryover of a State for any calendar  
 20 year is the excess (if any) of the unused  
 21 State rural investment credit ceiling for  
 22 such year (as defined in subparagraph  
 23 (C)(i)) over the excess (if any) of—

1 “(I) the unused State rural in-  
 2 vestment credit ceiling for the year  
 3 preceding such year, over

4 “(II) the aggregate rural invest-  
 5 ment credit dollar amount allocated  
 6 for such year.

7 “(iii) FORMULA FOR ALLOCATION OF  
 8 UNUSED RURAL INVESTMENT CREDIT  
 9 CARRYOVERS AMONG QUALIFIED  
 10 STATES.—The amount allocated under this  
 11 subparagraph to a qualified State for any  
 12 calendar year shall be the amount deter-  
 13 mined by the Secretary to bear the same  
 14 ratio to the aggregate unused rural invest-  
 15 ment credit carryovers of all States for the  
 16 preceding calendar year as such State’s  
 17 population for the calendar year bears to  
 18 the population of all qualified States for  
 19 the calendar year. For purposes of the pre-  
 20 ceding sentence, population shall be deter-  
 21 mined in accordance with section 146(j).

22 “(iv) QUALIFIED STATE.—For pur-  
 23 poses of this subparagraph, the term  
 24 ‘qualified State’ means, with respect to a  
 25 calendar year, any State—

1 “(I) which allocated its entire  
 2 State rural investment credit ceiling  
 3 for the preceding calendar year, and

4 “(II) for which a request is made  
 5 (not later than May 1 of the calendar  
 6 year) to receive an allocation under  
 7 clause (iii).

8 “(E) STATE MAY PROVIDE FOR DIF-  
 9 FERENT ALLOCATION.—Rules similar to the  
 10 rules of section 146(e) (other than paragraph  
 11 (2)(B) thereof) shall apply for purposes of this  
 12 paragraph.

13 “(F) POPULATION.—For purposes of this  
 14 paragraph, population shall be determined in  
 15 accordance with section 146(j).

16 “(G) COST-OF-LIVING ADJUSTMENT.—

17 “(i) IN GENERAL.—In the case of a  
 18 calendar year after 2005, the \$185,000  
 19 amount in subparagraph (C) shall be in-  
 20 creased by an amount equal to—

21 “(I) such dollar amount, multi-  
 22 plied by

23 “(II) the cost-of-living adjust-  
 24 ment determined under section  
 25 1(f)(3) for such calendar year by sub-



1                   stituting ‘calendar year 2004’ for ‘cal-  
2                   endar year 1992’ in subparagraph (B)  
3                   thereof.

4                   “(ii) ROUNDING.—Any increase under  
5                   clause (i) which is not a multiple of \$5,000  
6                   shall be rounded to the next lowest mul-  
7                   tiple of \$5,000.

8                   “(4) PORTION OF STATE CEILING SET-ASIDE  
9                   FOR CERTAIN INVESTMENT PROJECTS INVOLVING  
10                  QUALIFIED NONPROFIT ORGANIZATIONS.—

11                  “(A) IN GENERAL.—At least 10 percent of  
12                  the State rural investment credit ceiling for any  
13                  State for any calendar year shall be allocated to  
14                  qualified rural investment projects described in  
15                  subparagraph (B).

16                  “(B) INVESTMENT PROJECTS INVOLVING  
17                  QUALIFIED NONPROFIT ORGANIZATIONS.—For  
18                  purposes of subparagraph (A), a qualified rural  
19                  investment project is described in this subpara-  
20                  graph if a qualified nonprofit organization is to  
21                  materially participate (within the meaning of  
22                  section 469(h)) in the development and oper-  
23                  ation of the investment project throughout the  
24                  compliance period.

1           “(C) QUALIFIED NONPROFIT ORGANIZA-  
2           TION.—For purposes of this paragraph, the  
3           term ‘qualified nonprofit organization’ means  
4           any organization if—

5                   “(i) such organization is described in  
6                   any paragraph of section 501(c) and is ex-  
7                   empt from tax under section 501(a),

8                   “(ii) such organization is determined  
9                   by the State rural investment credit agency  
10                  not to be affiliated with or controlled by a  
11                  for-profit organization; and

12                  “(iii) 1 of the exempt purposes of  
13                  such organization includes the fostering of  
14                  rural investment.

15           “(D) TREATMENT OF CERTAIN SUBSIDI-  
16           ARIES.—

17                   “(i) IN GENERAL.—For purposes of  
18                   this paragraph, a qualified nonprofit orga-  
19                   nization shall be treated as satisfying the  
20                   ownership and material participation test  
21                   of subparagraph (B) if any qualified cor-  
22                   poration in which such organization holds  
23                   stock satisfies such test.

24                   “(ii) QUALIFIED CORPORATION.—For  
25                   purposes of clause (i), the term ‘qualified

1 corporation' means any corporation if 100  
2 percent of the stock of such corporation is  
3 held by 1 or more qualified nonprofit orga-  
4 nizations at all times during the period  
5 such corporation is in existence.

6 “(E) STATE MAY NOT OVERRIDE SET-  
7 ASIDE.—Nothing in subparagraph (F) of para-  
8 graph (3) shall be construed to permit a State  
9 not to comply with subparagraph (A) of this  
10 paragraph.

11 “(F) CREDITS FOR QUALIFIED NONPROFIT  
12 ORGANIZATIONS.—

13 “(i) ALLOWANCE OF CREDIT.—Any  
14 credit which would be allowable under sub-  
15 section (a) with respect to a qualified rural  
16 investment building of a qualified nonprofit  
17 organization if such organization were not  
18 exempt from tax under this chapter shall  
19 be treated as a credit allowable under sub-  
20 part C to such organization.

21 “(ii) USE OF CREDIT.—A qualified  
22 nonprofit organization may assign, trade,  
23 sell, or otherwise transfer any credit allow-  
24 able to such organization under subpara-  
25 graph (A) to any taxpayer.

1           “(iii) CREDIT NOT INCOME.—A trans-  
2           fer under subparagraph (B) of any credit  
3           allowable under subparagraph (A) shall not  
4           result in income for purposes of section  
5           511.

6           “(5) SPECIAL RULES.—

7           “(A) BUILDING MUST BE LOCATED WITH-  
8           IN JURISDICTION OF CREDIT AGENCY.—A rural  
9           investment credit agency may allocate its aggre-  
10          gate rural investment credit dollar amount only  
11          to buildings located in the jurisdiction of the  
12          governmental unit of which such agency is a  
13          part.

14          “(B) AGENCY ALLOCATIONS IN EXCESS OF  
15          LIMIT.—If the aggregate rural investment cred-  
16          it dollar amounts allocated by a rural invest-  
17          ment credit agency for any calendar year exceed  
18          the portion of the State rural investment credit  
19          ceiling allocated to such agency for such cal-  
20          endar year, the rural investment credit dollar  
21          amounts so allocated shall be reduced (to the  
22          extent of such excess) for buildings in the re-  
23          verse of the order in which the allocations of  
24          such amounts were made.

1           “(C) CREDIT REDUCED IF ALLOCATED  
2 CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT  
3 WHICH WOULD BE ALLOWABLE WITHOUT RE-  
4 GARD TO SALES CONVENTION, ETC.—

5           “(i) IN GENERAL.—The amount of  
6 the credit determined under this section  
7 with respect to any building shall not ex-  
8 ceed the clause (ii) percentage of the  
9 amount of the credit which would (but for  
10 this subparagraph) be determined under  
11 this section with respect to such building.

12           “(ii) DETERMINATION OF PERCENT-  
13 AGE.—For purposes of clause (i), the  
14 clause (ii) percentage with respect to any  
15 building is the percentage which—

16           “(I) the rural investment credit  
17 dollar amount allocated to such build-  
18 ing bears to

19           “(II) the credit amount deter-  
20 mined in accordance with clause (iii).

21           “(iii) DETERMINATION OF CREDIT  
22 AMOUNT.—The credit amount determined  
23 in accordance with this clause is the  
24 amount of the credit which would (but for  
25 this subparagraph) be determined under

1           this section with respect to the building if  
2           this section were applied without regard to  
3           paragraph (2)(A) of subsection (e).

4           “(D) RURAL INVESTMENT CREDIT AGENCY  
5           TO SPECIFY APPLICABLE PERCENTAGE AND  
6           MAXIMUM ELIGIBLE BASIS.—In allocating a  
7           rural investment credit dollar amount to any  
8           building, the rural investment credit agency  
9           shall specify the applicable percentage and the  
10          maximum eligible basis which may be taken  
11          into account under this section with respect to  
12          such building. The applicable percentage and  
13          maximum eligible basis so specified shall not ex-  
14          ceed the applicable percentage and eligible basis  
15          determined under this section without regard to  
16          this subsection.

17          “(6) OTHER DEFINITIONS.—For purposes of  
18          this subsection—

19               “(A) RURAL INVESTMENT CREDIT AGEN-  
20               CY.—The term ‘rural investment credit agency’  
21               means any agency authorized to carry out this  
22               subsection.

23               “(B) POSSESSIONS TREATED AS  
24               STATES.—The term ‘State’ includes a posses-  
25               sion of the United States.

1           “(7) PORTION OF STATE CEILING SET-ASIDE  
2           FOR QUALIFIED RURAL SMALL BUSINESS INVEST-  
3           MENT CREDITS.—Not more than 10 percent of the  
4           State rural investment credit ceiling for any State  
5           for any calendar year may be allocated to qualified  
6           rural small business investment credits under section  
7           42B.

8           “(h) DEFINITIONS AND SPECIAL RULES.—For pur-  
9           poses of this section—

10           “(1) COMPLIANCE PERIOD.—The term ‘compli-  
11           ance period’ means, with respect to any building, the  
12           period of 10 taxable years beginning with the 1st  
13           taxable year of the credit period with respect there-  
14           to.

15           “(2) NEW BUILDING.—The term ‘new building’  
16           means a building the original use of which begins  
17           with the taxpayer.

18           “(3) EXISTING BUILDING.—The term ‘existing  
19           building’ means any building which is not a new  
20           building.

21           “(4) APPLICATION TO ESTATES AND TRUSTS.—  
22           In the case of an estate or trust, the amount of the  
23           credit determined under subsection (a) and any in-  
24           crease in tax under subsection (i) shall be appor-  
25           tioned between the estate or trust and the bene-

1       ficiaries on the basis of the income of the estate or  
2       trust allocable to each.

3       “(i) RECAPTURE OF CREDIT.—If—

4               “(1) as of the close of any taxable year in the  
5       compliance period, the amount of the eligible basis  
6       of any building with respect to the taxpayer is less  
7       than

8               “(2) the amount of such basis as of the close  
9       of the preceding taxable year,  
10      then the taxpayer’s tax under this chapter for the  
11      taxable year shall be increased by the credit recap-  
12      ture amount determined under rules similar to the  
13      rules of section 42(j).

14      “(j) CERTIFICATIONS AND OTHER REPORTS TO SEC-  
15      RETARY.—

16              “(1) CERTIFICATION WITH RESPECT TO 1ST  
17      YEAR OF CREDIT PERIOD.—Following the close of  
18      the 1st taxable year in the credit period with respect  
19      to any qualified rural investment building, the tax-  
20      payer shall certify to the Secretary (at such time  
21      and in such form and in such manner as the Sec-  
22      retary prescribes)—

23                      “(A) the taxable year, and calendar year,  
24                      in which such building was first placed in serv-  
25                      ice,



1           “(B) the eligible basis of such building as  
2           of the beginning of the credit period,

3           “(C) the maximum applicable percentage  
4           and eligible basis permitted to be taken into ac-  
5           count by the appropriate rural investment cred-  
6           it agency under subsection (g),

7           “(D) the election made under subsection  
8           (f) with respect to the qualified rural invest-  
9           ment project of which such building is a part,  
10          and

11          “(E) such other information as the Sec-  
12          retary may require.

13          In the case of a failure to make the certification re-  
14          quired by the preceding sentence on the date pre-  
15          scribed therefor, unless it is shown that such failure  
16          is due to reasonable cause and not to willful neglect,  
17          no credit shall be allowable by reason of subsection  
18          (a) with respect to such building for any taxable  
19          year ending before such certification is made.

20          “(2) ANNUAL REPORTS TO THE SECRETARY.—

21          The Secretary may require taxpayers to submit an  
22          information return (at such time and in such form  
23          and manner as the Secretary prescribes) for each  
24          taxable year setting forth—

1           “(A) the eligible basis for the taxable year  
2           of each qualified rural investment building of  
3           the taxpayer,

4           “(B) the information described in para-  
5           graph (1)(C) for the taxable year, and

6           “(C) such other information as the Sec-  
7           retary may require.

8           The penalty under section 6652(j) shall apply to any  
9           failure to submit the return required by the Sec-  
10          retary under the preceding sentence on the date pre-  
11          scribed therefor.

12          “(3) ANNUAL REPORTS FROM RURAL INVEST-  
13          MENT CREDIT AGENCIES.—Each agency which allo-  
14          cates any rural investment credit amount to any  
15          building for any calendar year shall submit to the  
16          Secretary (at such time and in such manner as the  
17          Secretary shall prescribe) an annual report speci-  
18          fying—

19               “(A) the amount of rural investment credit  
20               amount allocated to each building for such year,

21               “(B) sufficient information to identify each  
22               such building and the taxpayer with respect  
23               thereto, and

24               “(C) such other information as the Sec-  
25               retary may require.

1       The penalty under section 6652(j) shall apply to any  
2       failure to submit the report required by the pre-  
3       ceding sentence on the date prescribed therefor.

4       “(k) RESPONSIBILITIES OF RURAL INVESTMENT  
5 CREDIT AGENCIES.—

6               “(1) PLANS FOR ALLOCATION OF CREDIT  
7 AMONG INVESTMENT PROJECTS.—

8               “(A) IN GENERAL.—Notwithstanding any  
9       other provision of this section, the rural invest-  
10      ment credit dollar amount with respect to any  
11      building shall be zero unless—

12              “(i) such amount was allocated pursu-  
13              ant to a qualified rural investment plan of  
14              the agency which is approved by the gov-  
15              ernmental unit (in accordance with rules  
16              similar to the rules of section 147(f)(2)  
17              (other than subparagraph (B)(ii) thereof))  
18              of which such agency is a part,

19              “(ii) such agency notifies the chief ex-  
20              ecutive officer (or the equivalent) of the  
21              local jurisdiction within which the building  
22              is located of such investment project and  
23              provides such individual a reasonable op-  
24              portunity to comment on the investment  
25              project,

1           “(iii) a comprehensive market study  
2           of the development needs of individuals in  
3           the qualifying county to be served by the  
4           investment project is conducted before the  
5           credit allocation is made and at the devel-  
6           oper’s expense by a disinterested party who  
7           is approved by such agency, and

8           “(iv) a written explanation is available  
9           to the general public for any allocation of  
10          a rural investment credit dollar amount  
11          which is not made in accordance with es-  
12          tablished priorities and selection criteria of  
13          the rural investment credit agency.

14          “(B) QUALIFIED RURAL INVESTMENT  
15          PLAN.—For purposes of this section, the term  
16          ‘qualified rural investment plan’ means any  
17          plan—

18               “(i) which sets forth selection criteria  
19               to be used to determine priorities of the  
20               rural investment credit agency which are  
21               appropriate to qualifying counties,

22               “(ii) which also gives preference in al-  
23               locating rural investment credit dollar  
24               amounts among selected investment  
25               projects to—

1                   “(I) investment projects that tar-  
2                   get those small rural counties with  
3                   consistently high rates of net out-mi-  
4                   gration,

5                   “(II) investment projects that  
6                   link the economic development and job  
7                   creation efforts of 2 or more small  
8                   rural counties with high rates of net  
9                   out-migration, and

10                  “(III) investment projects that  
11                  link the economic development and job  
12                  creation efforts of 1 or more small  
13                  rural counties in the State with high  
14                  rates of net out-migration to related  
15                  efforts in regions of such State experi-  
16                  encing economic growth, and

17                  “(iii) which provides a procedure that  
18                  the agency (or an agent or other private  
19                  contractor of such agency) will follow in  
20                  monitoring for noncompliance with the  
21                  provisions of this section and in notifying  
22                  the Internal Revenue Service of such non-  
23                  compliance which such agency becomes  
24                  aware of and in monitoring for noncompli-  
25                  ance through regular site visits.

1           “(C) CERTAIN SELECTION CRITERIA MUST  
2           BE USED.—The selection criteria set forth in a  
3           qualified rural investment plan must include—

4                   “(i) investment project location,

5                   “(ii) technology and transportation in-  
6                   frastructure needs, and

7                   “(iii) private development trends.

8           “(2) CREDIT ALLOCATED TO BUILDING NOT TO  
9           EXCEED AMOUNT NECESSARY TO ASSURE INVEST-  
10          MENT PROJECT FEASIBILITY.—

11                   “(A) IN GENERAL.—The rural investment  
12                   credit dollar amount allocated to an investment  
13                   project shall not exceed the amount the rural  
14                   investment credit agency determines is nec-  
15                   essary for the financial feasibility of the invest-  
16                   ment project and its viability as a qualified  
17                   rural investment project throughout the compli-  
18                   ance period.

19                   “(B) AGENCY EVALUATION.—In making  
20                   the determination under subparagraph (A), the  
21                   rural investment credit agency shall consider—

22                           “(i) the sources and uses of funds and  
23                           the total financing planned for the invest-  
24                           ment project,

1 “(ii) any proceeds or receipts expected  
2 to be generated by reason of tax benefits,

3 “(iii) the percentage of the rural in-  
4 vestment credit dollar amount used for in-  
5 vestment project costs other than the cost  
6 of intermediaries, and

7 “(iv) the reasonableness of the devel-  
8 opmental and operational costs of the in-  
9 vestment project.

10 Clause (iii) shall not be applied so as to impede  
11 the development of investment projects in hard-  
12 to-develop areas.

13 “(C) DETERMINATION MADE WHEN CRED-  
14 IT AMOUNT APPLIED FOR AND WHEN BUILDING  
15 PLACED IN SERVICE.—

16 “(i) IN GENERAL.—A determination  
17 under subparagraph (A) shall be made as  
18 of each of the following times:

19 “(I) The application for the rural  
20 investment credit dollar amount.

21 “(II) The allocation of the rural  
22 investment credit dollar amount.

23 “(III) The date the building is  
24 first placed in service.

1                   “(ii) CERTIFICATION AS TO AMOUNT  
2                   OF OTHER SUBSIDIES.—Prior to each de-  
3                   termination under clause (i), the taxpayer  
4                   shall certify to the rural investment credit  
5                   agency the full extent of all Federal, State,  
6                   and local subsidies which apply (or which  
7                   the taxpayer expects to apply) with respect  
8                   to the building.

9           “(l) REGULATIONS.—The Secretary shall prescribe  
10 such regulations as may be necessary or appropriate to  
11 carry out the purposes of this section, including regula-  
12 tions—

13                   “(1) dealing with—

14                   “(A) investment projects which include  
15                   more than 1 building or only a portion of a  
16                   building,

17                   “(B) buildings which are sold in portions,

18                   “(2) providing for the application of this section  
19                   to short taxable years,

20                   “(3) preventing the avoidance of the rules of  
21                   this section, and

22                   “(4) providing the opportunity for rural invest-  
23                   ment credit agencies to correct administrative errors  
24                   and omissions with respect to allocations and record  
25                   keeping within a reasonable period after their dis-



1       covery, taking into account the availability of regula-  
2       tions and other administrative guidance from the  
3       Secretary.”.

4       (b) CURRENT YEAR BUSINESS CREDIT CALCULA-  
5       TION.—Section 38(b) (relating to current year business  
6       credit), as amended by this Act, is amended by striking  
7       “plus” at the end of paragraph (16), by striking the period  
8       at the end of paragraph (17) and inserting “, plus”, and  
9       by adding at the end the following:

10           “(18) the rural investment credit determined  
11       under section 42A(a).”.

12       (c) LIMITATION ON CARRYBACK.—Subsection (d) of  
13       section 39 (relating to carryback and carryforward of un-  
14       used credits), as amended by this Act, is amended by add-  
15       ing at the end the following:

16           “(12) NO CARRYBACK OF RURAL INVESTMENT  
17       CREDIT BEFORE EFFECTIVE DATE.—No portion of  
18       the unused business credit for any taxable year  
19       which is attributable to the rural investment credit  
20       determined under section 42A may be carried back  
21       to a taxable year beginning before the date of the  
22       enactment of the Jumpstart Our Business Strength  
23       (JOBS) Act.”.

24       (d) CONFORMING AMENDMENTS.—

1           (1) Section 55(c)(1) is amended by inserting  
 2           “or subsection (i) or (j) of section 42A” after “sec-  
 3           tion 42”.

4           (2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and  
 5           (k)(1) of section 469 are each amended by inserting  
 6           “or 42A” after “section 42”.

7           (3) Section 772(a) is amended by striking  
 8           “and” at the end of paragraph (10), by redesignig-  
 9           nating paragraph (11) as paragraph (12), and by in-  
 10          serting after paragraph (10) the following:

11           “(11) the rural investment credit determined  
 12          under section 42A, and”.

13          (4) Section 774(b)(4) is amended by inserting  
 14          “, 42A(i),” after “section 42(j)”.

15          (e) CLERICAL AMENDMENT.—The table of sections  
 16          for subpart D of part IV of subchapter A of chapter 1  
 17          is amended by inserting after the item relating to section  
 18          42 the following:

            “Sec. 42A. Rural investment credit.”.

19          (f) EFFECTIVE DATE.—The amendments made by  
 20          this section shall apply to expenditures made in taxable  
 21          years beginning after the date of the enactment of this  
 22          Act.

1 **SEC. 634. QUALIFIED RURAL SMALL BUSINESS INVEST-**  
 2 **MENT CREDIT.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 (relating to business related cred-  
 5 its), as amended by this Act, is amended by adding at  
 6 the end the following:

7 **“SEC. 42B. QUALIFIED RURAL SMALL BUSINESS INVEST-**  
 8 **MENT CREDIT.**

9 “(a) IN GENERAL.—For purposes of section 38, in  
 10 the case of a qualified rural small business, the amount  
 11 of the qualified rural small business investment credit de-  
 12 termined under this section for any taxable year is equal  
 13 to 30 percent of the qualified expenditures for the taxable  
 14 year of such business.

15 “(b) DOLLAR LIMITATION.—

16 “(1) IN GENERAL.—The credit allowable under  
 17 subsection (a) for any taxable year shall not exceed  
 18 the lesser of—

19 “(A) \$5,000, or

20 “(B) the amount when added to the aggre-  
 21 gate credits allowable to the taxpayer under  
 22 subsection (a) for all preceding taxable years  
 23 does not exceed \$25,000.

24 “(2) NO DOUBLE CREDIT ALLOWED.—In the  
 25 case of any qualified rural small business which  
 26 places in service a qualified rural investment build-

1       ing with respect to which a rural investment credit  
 2       is allowed under section 42A for any taxable year,  
 3       paragraph (1)(A) shall be applied with respect to  
 4       such taxable year by substituting ‘zero’ for ‘\$5,000’.

5       “(c) QUALIFIED RURAL SMALL BUSINESS.—For  
 6       purposes of this section, the term ‘qualified rural small  
 7       business’ means any person if such person—

8               “(1) employed not more than 5 full-time em-  
 9       ployees during the taxable year,

10              “(2) materially and substantially participates in  
 11       management,

12              “(3) is located in a qualifying county, and

13              “(4) submitted a qualified business plan with  
 14       respect to which the rural investment credit agency  
 15       with jurisdiction over such qualifying county has al-  
 16       located a portion of the State rural investment ceil-  
 17       ing for such taxable year under section 42A(g)(7).

18       For purposes of paragraph (1), an employee shall be con-  
 19       sidered full-time if such employee is employed at least 30  
 20       hours per week for 20 or more calendar weeks in the tax-  
 21       able year.

22       “(d) QUALIFIED EXPENDITURES.—For purposes of  
 23       this section—

24              “(1) IN GENERAL.—The term ‘qualified expend-  
 25       itures’ means expenditures normally associated with

1 starting or expanding a business and included in a  
2 qualified business plan, including costs for capital,  
3 plant and equipment, inventory expenses, and wages,  
4 but not including interest costs.

5 “(2) ONLY CERTAIN EXPENDITURES INCLUDED  
6 FOR EXISTING BUSINESSES.—In the case of a quali-  
7 fied rural small business with respect to which a  
8 credit under subsection (a) was allowed for a pre-  
9 ceding taxable year, such term shall include only so  
10 much of the expenditures described in paragraph (1)  
11 for the taxable year as exceed the aggregate of such  
12 expenditures for the preceding taxable year.

13 “(e) QUALIFIED BUSINESS PLAN.—For purposes of  
14 this section, the term ‘qualified business plan’ means a  
15 business plan which—

16 “(1) has been approved by the rural investment  
17 credit agency with jurisdiction over the qualifying  
18 county in which the qualified rural small business is  
19 located pursuant to such agency’s rural investment  
20 plan, and

21 “(2) meets such requirements as the agency  
22 may specify.

23 “(f) DENIAL OF DOUBLE BENEFIT.—In the case of  
24 the amount of the credit determined under this section—

1           “(1) no deduction or credit shall be allowed for  
2           such amount under any other provision of this chap-  
3           ter, and

4           “(2) no increase in the adjusted basis of any  
5           property shall result from such amount.

6           “(g) DEFINITIONS AND SPECIAL RULES.—For pur-  
7           poses of this section—

8           “(1) any term which is used in this section  
9           which is used in section 42A shall have the meaning  
10          given such term by section 42A, and

11          “(2) rules similar to the rules under subsections  
12          (j)(2), (j)(3), and (k) of section 42A shall apply.”.

13          (b) CURRENT YEAR BUSINESS CREDIT CALCULA-  
14          TION.—Section 38(b) (relating to current year business  
15          credit), as amended by this Act, is amended by striking  
16          “plus” at the end of paragraph (17), by striking the period  
17          at the end of paragraph (18) and inserting “, plus”, and  
18          by adding at the end the following:

19                 “(19) the qualified rural small business invest-  
20                 ment credit determined under section 42B(a).”.

21          (c) LIMITATION ON CARRYBACK.—Subsection (d) of  
22          section 39 (relating to carryback and carryforward of un-  
23          used credits), as amended by this Act, is amended by add-  
24          ing at the end the following:

1           “(13) NO CARRYBACK OF QUALIFIED RURAL  
 2           SMALL BUSINESS INVESTMENT CREDIT BEFORE EF-  
 3           FECTIVE DATE.—No portion of the unused business  
 4           credit for any taxable year which is attributable to  
 5           the qualified rural small business investment credit  
 6           determined under section 42B may be carried back  
 7           to a taxable year beginning before the date of the  
 8           enactment of the Jumpstart Our Business Strength  
 9           (JOBS) Act.”.

10          (d) CLERICAL AMENDMENT.—The table of sections  
 11       for subpart D of part IV of subchapter A of chapter 1,  
 12       as amended by this Act, is amended by inserting after the  
 13       item relating to section 42A the following:

                  “Sec. 42B. Qualified rural small business investment credit.”.

14          (e) EFFECTIVE DATE.—The amendments made by  
 15       this section shall apply to expenditures made in taxable  
 16       years beginning after the date of the enactment of this  
 17       Act.

18       **SEC. 635. CREDIT FOR MAINTENANCE OF RAILROAD**  
 19                               **TRACK.**

20          (a) IN GENERAL.—Subpart D of part IV of sub-  
 21       chapter A of chapter 1 (relating to business-related cred-  
 22       its), as amended by this Act, is amended by adding at  
 23       the end the following new section:

1 **“SEC. 45I. RAILROAD TRACK MAINTENANCE CREDIT.**

2       “(a) GENERAL RULE.—For purposes of section 38,  
3 the railroad track maintenance credit determined under  
4 this section for the taxable year is an amount equal to  
5 30 percent of the qualified railroad track maintenance ex-  
6 penditures paid or incurred by an eligible taxpayer during  
7 the taxable year.

8       “(b) LIMITATION.—The credit allowed under sub-  
9 section (a) for any taxable year shall not exceed the prod-  
10 uct of—

11               “(1) \$3,500, and

12               “(2) the number of miles of railroad track  
13 owned or leased by the eligible taxpayer as of the  
14 close of the taxable year.

15       “(c) ELIGIBLE TAXPAYER.—For purposes of this sec-  
16 tion, the term ‘eligible taxpayer’ means—

17               “(1) any Class II or Class III railroad, and

18               “(2) any person who transports property using  
19 the rail facilities of a person described in paragraph  
20 (1) or who furnishes railroad-related property or  
21 services to such a person.

22       “(d) QUALIFIED RAILROAD TRACK MAINTENANCE  
23 EXPENDITURES.—For purposes of this section, the term  
24 ‘qualified railroad track maintenance expenditures’ means  
25 expenditures (whether or not otherwise chargeable to cap-  
26 ital account) for maintaining railroad track (including



1 roadbed, bridges, and related track structures) owned or  
2 leased as of January 1, 2005, by a Class II or Class III  
3 railroad.

4 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

5 “(1) CLASS II OR CLASS III RAILROAD.—For  
6 purposes of this section, the terms ‘Class II railroad’  
7 and ‘Class III railroad’ have the meanings given  
8 such terms by the Surface Transportation Board.

9 “(2) CONTROLLED GROUPS.—Rules similar to  
10 the rules of paragraph (1) of section 41(f) shall  
11 apply for purposes of this section.

12 “(3) BASIS ADJUSTMENT.—For purposes of  
13 this subtitle, if a credit is allowed under this section  
14 with respect to any railroad track, the basis of such  
15 track shall be reduced by the amount of the credit  
16 so allowed.

17 “(f) APPLICATION OF SECTION.—This section shall  
18 apply to qualified railroad track maintenance expenditures  
19 paid or incurred during taxable years beginning after De-  
20 cember 31, 2004, and before January 1, 2008.”.

21 (b) LIMITATION ON CARRYBACK.—Section 39(d) (re-  
22 lating to transition rules), as amended by this Act, is  
23 amended by adding at the end the following new para-  
24 graph:

1           “(14) NO CARRYBACK OF RAILROAD TRACK  
2           MAINTENANCE CREDIT BEFORE EFFECTIVE DATE.—  
3           No portion of the unused business credit for any  
4           taxable year which is attributable to the railroad  
5           track maintenance credit determined under section  
6           45I may be carried to a taxable year beginning be-  
7           fore January 1, 2005.”.

8           (c) CONFORMING AMENDMENTS.—

9           (1) Section 38(b) (relating to general business  
10          credit), as amended by this Act, is amended by  
11          striking “plus” at the end of paragraph (18), by  
12          striking the period at the end of paragraph (19) and  
13          inserting “, plus”, and by adding at the end the fol-  
14          lowing new paragraph:

15          “(20) the railroad track maintenance credit de-  
16          termined under section 45I(a).”.

17          (2) Subsection (a) of section 1016, as amended  
18          by this Act, is amended by striking “and” at the end  
19          of paragraph (28), by striking the period at the end  
20          of paragraph (29) and inserting “, and”, and by  
21          adding at the end the following new paragraph:

22          “(30) in the case of railroad track with respect  
23          to which a credit was allowed under section 45I, to  
24          the extent provided in section 45I(e)(3).”.

1 (d) CLERICAL AMENDMENT.—The table of sections  
 2 for subpart D of part IV of subchapter A of chapter 1,  
 3 as amended by this Act, is amended by inserting after the  
 4 item relating to section 45H the following new item:

“Sec. 45I. Railroad track maintenance credit.”.

5 (e) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to taxable years beginning after  
 7 December 31, 2004.

8 **SEC. 636. RAILROAD REVITALIZATION AND SECURITY IN-**  
 9 **VESTMENT CREDIT.**

10 (a) RAILROAD REVITALIZATION AND SECURITY IN-  
 11 VESTMENT CREDIT.—

12 (1) IN GENERAL.—Subpart D of part IV of  
 13 subchapter A of chapter 1 (relating to business-re-  
 14 lated credits), as amended by this Act, is amended  
 15 by adding at the end the following new section:

16 **“SEC. 45J. RAILROAD REVITALIZATION AND SECURITY IN-**  
 17 **VESTMENT CREDIT.**

18 “(a) GENERAL RULE.—For purposes of section 38,  
 19 the railroad revitalization and security investment credit  
 20 determined under this section for the taxable year is the  
 21 amount equal to 50 percent of the qualified project ex-  
 22 penditures paid or incurred by the taxpayer during the  
 23 taxable year.

24 “(b) QUALIFIED PROJECT EXPENDITURES.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the term ‘qualified project expenditures’ means,  
3           with respect to any project for intercity passenger  
4           rail transportation (as defined under section 24102  
5           of title 49, United States Code) which is included in  
6           a State rail plan, expenditures (whether or not oth-  
7           erwise chargeable to capital account) for—

8                   “(A) planning,

9                   “(B) environmental review and environ-  
10                  mental impact mitigation,

11                  “(C) track and track structure rehabilita-  
12                  tion, relocation, improvement, and development,

13                  “(D) railroad safety and security improve-  
14                  ments,

15                  “(E) communications and signaling im-  
16                  provements,

17                  “(F) intercity passenger rail equipment ac-  
18                  quisition, and

19                  “(G) rail station and intermodal facilities  
20                  development.

21           “(2) EXCEPTIONS.—An expenditure shall not  
22           be treated as a qualified project expenditure unless  
23           all persons which conduct rail operations over the in-  
24           frastructure with respect to which such an expendi-  
25           ture is made—

1           “(A) are employers for purposes of the  
2           Railroad Retirement Act of 1974 and are car-  
3           riers for purposes of the Railway Labor Act  
4           (unless such a person is an operator with re-  
5           spect to commuter rail passenger transportation  
6           (as defined in section 24102(4) of title 49,  
7           United States Code) of a State or local govern-  
8           ment authority (as such terms are defined in  
9           section 5302 of such title) eligible to receive fi-  
10          nancial assistance under section 5307 of such  
11          title, a contractor performing services in con-  
12          nection with the operations with respect to com-  
13          muter rail passenger transportation (as so de-  
14          fined), or the Alaska Railroad or its contrac-  
15          tors),

16          “(B) provide assurances to the State that  
17          any collective bargaining agreements with such  
18          a person’s employees (including terms regu-  
19          lating the contracting of work) will remain in  
20          full force and effect according to the terms of  
21          the agreements for work performed for such a  
22          person on the railroad transportation corridor,  
23          and

24          “(C) comply with the protective agree-  
25          ments established under section 504 of the

1 Railroad Revitalization and Regulatory Reform  
2 Act of 1976 with respect to employees affected  
3 by actions taken in connection with the project.

4 “(c) LIMITATION.—

5 “(1) IN GENERAL.—The amount of the credit  
6 allowed under subsection (a) for any taxable year  
7 with respect to any project for which qualified  
8 project expenditures are made shall not exceed the  
9 limitation allocated to such project under this sub-  
10 section for the calendar year in which the taxable  
11 year begins.

12 “(2) STATE LIMITATION.—

13 “(A) IN GENERAL.—There is a State rail-  
14 road revitalization and security investment  
15 credit limitation for each calendar year. Such  
16 limitation is the amount which bears the same  
17 ratio to \$165,000,000 as the allocation number  
18 for such State bears to the allocation number  
19 for all States.

20 “(B) ALLOCATION NUMBER.—For pur-  
21 poses of subparagraph (A), the allocation num-  
22 ber is, with respect to any State, the sum of the  
23 following:

1                   “(i) The number of railroad and pub-  
2                   lic road at grade crossings on intercity pas-  
3                   senger rail routes within the State.

4                   “(ii) The number of intercity pas-  
5                   senger train miles within the State.

6                   “(iii) The number of intercity embar-  
7                   kations and disembarkations for each pas-  
8                   senger within the State.

9                   “(3) UNUSED CREDIT CARRYOVERS ALLOCATED  
10                  AMONG CERTAIN STATES.—

11                  “(A) IN GENERAL.—The unused credit  
12                  carryover for all States for any calendar year  
13                  shall be reallocated to each qualified State in an  
14                  amount which bears the same ratio to the un-  
15                  used credit carryover for all States for the cal-  
16                  endar as the allocation number for such quali-  
17                  fied State bears to the allocation number for all  
18                  qualified States.

19                  “(B) UNUSED CREDIT CARRYOVER.—For  
20                  purposes of this paragraph, the term ‘unused  
21                  credit carryover’ means, with respect to any  
22                  State, the excess of the State limitation (deter-  
23                  mined under paragraph (2)) for the calendar  
24                  year over the amount allocated by the State  
25                  under paragraph (4) for such calendar year.

1           “(C) QUALIFIED STATES.—For purposes  
2           of this paragraph, the term ‘qualified State’  
3           means any State—

4                   “(i) which allocated its entire State  
5                   limitation amount under paragraph (4) for  
6                   the calendar year, and

7                   “(ii) for which a request is made to  
8                   receive an allocation under this paragraph.

9           “(4) ALLOCATION WITHIN STATES.—Each  
10          State shall allocate the limitation amount allocated  
11          to such State under paragraphs (2) and (3) to  
12          projects for intercity passenger rail transportation  
13          which are included in the State rail plan of such  
14          State.

15          “(5) NEW YORK CITY RAIL PROJECTS.—

16                   “(A) IN GENERAL.—In addition to the  
17                   amounts allocated under paragraph (2), the  
18                   Secretary shall allocate a limitation of  
19                   \$200,000,000 to New York City, New York, for  
20                   qualified project expenditures within the New  
21                   York Liberty Zone (as defined in section  
22                   1400L(h)) for the period described in sub-  
23                   section (h).



1                   “(B) ALLOCATION AMONG PROJECTS.—Of  
2                   the limitation allocated under subparagraph  
3                   (A)—

4                   “(i) \$100,000,000 shall be allocated  
5                   to projects designated by the Mayor of  
6                   New York City, New York, and

7                   “(ii) \$100,000,000 shall be allocated  
8                   to projects designated by the Governor of  
9                   New York.

10                  “(C) SPECIAL RULE REGARDING QUALI-  
11                  FIED PROJECT EXPENDITURES.—For purposes  
12                  of this paragraph, a qualified project expendi-  
13                  ture shall include any expenditure for improve-  
14                  ments to subway systems, for commuter rail  
15                  systems, for rail links to airports, and for public  
16                  infrastructure improvements in the vicinity of  
17                  rail or subway stations.

18                  “(d) STATE RAIL PLAN.—For purposes of this sec-  
19                  tion, the term ‘State rail plan’ means a plan prepared and  
20                  maintained in accordance with chapter 225 of title 49,  
21                  United States Code.

22                  “(e) BASIS ADJUSTMENT.—For purposes of this sub-  
23                  title, if a credit is allowed under this section with respect  
24                  to any property, the basis of such property shall be re-  
25                  duced by the amount of the credit so allowed.

1       “(f) NO DOUBLE BENEFIT.—No credit shall be al-  
 2       lowed under this section with respect to any expenditures  
 3       for which a credit is allowed under section 45I.

4       “(g) CREDIT TRANSFERABILITY.—Any credit allow-  
 5       able under this section may be transferred (but not more  
 6       than once) if—

7               “(1) the credit exceeds the tax liability of the  
 8       taxpayer for the taxable year, or

9               “(2) the taxpayer is not subject to any tax im-  
 10      posed by this chapter by reason of having a tax-ex-  
 11      empt status.

12      “(h) APPLICATION OF SECTION.—This section shall  
 13      apply to qualified project expenditures paid or incurred  
 14      during taxable years beginning after December 31, 2004,  
 15      and before January 1, 2008.”.

16           (2) LIMITATION ON CARRYBACK.—Section  
 17      39(d) (relating to transition rules), as amended by  
 18      this Act, is amended by adding at the end the fol-  
 19      lowing new paragraph:

20           “(15) NO CARRYBACK OF SECTION 45J CREDIT  
 21      BEFORE EFFECTIVE DATE.—No portion of the un-  
 22      used business credit for any taxable year which is  
 23      attributable to the credit determined under section  
 24      45J(a) may be carried back to any taxable year be-  
 25      ginning before January 1, 2005.”.

1 (3) CONFORMING AMENDMENTS.—

2 (A) Section 38(b) (relating to general busi-  
 3 ness credit), as amended by this Act, is amend-  
 4 ed by striking “plus” at the end of paragraph  
 5 (19), by striking the period at the end of para-  
 6 graph (20) and inserting “, plus”, and by add-  
 7 ing at the end the following new paragraph:

8 “(21) the railroad revitalization and security in-  
 9 vestment credit determined under section 45J(a).”.

10 (B) Subsection (a) of section 1016, as  
 11 amended by this Act, is amended by striking  
 12 “and” at the end of paragraph (29), by striking  
 13 the period at the end of paragraph (30) and in-  
 14 serting “, and”, and by adding at the end the  
 15 following new paragraph:

16 “(31) in the case of property with respect to  
 17 which a credit was allowed under section 45J, to the  
 18 extent provided in section 45J(e).”.

19 (4) CLERICAL AMENDMENT.—The table of sec-  
 20 tions for subpart D of part IV of subchapter A of  
 21 chapter 1, as amended by this Act, is amended by  
 22 inserting after the item relating to section 45I the  
 23 following new item:

“Sec. 45J. Railroad revitalization and security invest-  
 ment credit.”.

1           (5) EFFECTIVE DATE.—The amendments made  
2       by this section shall apply to taxable years beginning  
3       after December 31, 2004.

4       (b) STATE RAIL PLANS.—

5           (1) IN GENERAL.—Part B of subtitle V of title  
6       49, United States Code, is amended by adding at  
7       the end the following:

8       **“CHAPTER 225—STATE RAIL PLANS**

“Sec.

“22501. Authority.

“22502. Purposes.

“22503. Transparency; coordination.

“22504. Content.

“22505. Approval.

“22506. Definitions.

9       **“§ 22501. Authority**

10       “(a) IN GENERAL.—Each State may prepare and  
11       maintain a State rail plan in accordance with the provi-  
12       sions of this chapter.

13       “(b) REQUIREMENTS.—For the preparation and peri-  
14       odic revision of a State rail plan, a State shall—

15           “(1) establish or designate a State rail trans-  
16       portation authority to prepare, maintain, coordinate,  
17       and administer the plan;

18           “(2) establish or designate a State rail plan ap-  
19       proval authority to approve the plan;

1           “(3) make the State’s approved plan available  
2           to the public and transmit a copy to the Secretary  
3           of Transportation; and

4           “(4) revise the plan no less frequently than  
5           once every 5 years.

6   **“§ 22502. Purposes**

7           “(a) PURPOSES.—The purposes of a State rail plan  
8           are as follows:

9           “(1) To set forth State policy involving freight  
10          and passenger rail transportation, including com-  
11          muter rail operations, in the State.

12          “(2) To present priorities and strategies to en-  
13          hance rail service in the State that benefits the pub-  
14          lic.

15          “(3) To serve as the basis for Federal and  
16          State rail investments within the State.

17          “(b) CONTENT.—The State rail plan shall establish  
18          the period covered by such plan.

19          “(c) CONSISTENCY WITH STATE TRANSPORTATION  
20          EFFORTS.—A State rail plan shall be consistent with the  
21          State transportation planning goals and programs and  
22          shall set forth rail transportation’s role within the State  
23          transportation system.

1 **“§ 22503. Transparency; coordination**

2 “(a) PREPARATION.—A State shall provide adequate  
3 and reasonable notice and opportunity for comment and  
4 other input on a proposed State rail plan under this chap-  
5 ter to the following:

6 “(1) The public.

7 “(2) Rail carriers.

8 “(3) Commuter and transit authorities oper-  
9 ating in, or affected by rail operations within, the  
10 State.

11 “(4) Units of local government.

12 “(5) Other parties interested in the preparation  
13 and review of the State rail plan.

14 “(b) INTERGOVERNMENTAL COORDINATION.—A  
15 State shall review the freight and passenger rail service  
16 activities and initiatives of regional planning agencies, re-  
17 gional transportation authorities, and municipalities with-  
18 in the State, or in the region in which the State is located,  
19 while preparing the plan, and shall include any rec-  
20 ommendations made by such agencies, authorities, and  
21 municipalities as deemed appropriate by the State.

22 **“§ 22504. Content**

23 “(a) IN GENERAL.—Each State rail plan shall con-  
24 tain the following:

25 “(1) An inventory of the existing overall rail  
26 transportation system and rail services and facilities

1 within the State and an analysis of the role of rail  
2 transportation within the State's surface transpor-  
3 tation system.

4 “(2) A comprehensive review of all rail lines  
5 within the State, including proposed high speed rail  
6 corridors and significant rail line segments not cur-  
7 rently in service.

8 “(3) A statement of the State's passenger rail  
9 service objectives, including minimum service levels,  
10 for intercity passenger rail transportation routes in  
11 the State.

12 “(4) A general analysis of rail's transportation,  
13 economic, and environmental impacts in the State,  
14 including congestion mitigation, trade and economic  
15 development, air quality, land-use, energy-use, and  
16 community impacts.

17 “(5) A long-range rail investment program for  
18 current and future freight and passenger infrastruc-  
19 ture in the State that meets the requirements of  
20 subsection (b).

21 “(6) A statement of public financing issues for  
22 rail projects and service in the State, including a list  
23 of current and prospective public capital and oper-  
24 ating funding resources, public subsidies, State tax-

1       ation, and other financial policies relating to rail in-  
2       frastructure development.

3           “(7) An identification of rail infrastructure  
4       issues within the State that reflects consultation  
5       with all relevant stake holders.

6           “(8) A review of major passenger and freight  
7       intermodal rail connections and facilities within the  
8       State, including seaports, and prioritized options to  
9       maximize service integration and efficiency between  
10      rail and other modes of transportation within the  
11      State.

12          “(9) A review of publicly funded projects within  
13      the State to improve rail transportation safety and  
14      security, including all major projects funded under  
15      section 130 of title 23.

16          “(10) A performance evaluation of passenger  
17      rail services operating in the State, including pos-  
18      sible improvements in those services, and a descrip-  
19      tion of strategies to achieve those improvements.

20          “(11) A compilation of studies and reports on  
21      high-speed rail corridor development within the  
22      State not included in a previous plan under this  
23      chapter, and a plan for funding any recommended  
24      development of such corridors in the State.



1           “(12) A statement that the State satisfies the  
2           conditions set forth in section 22102.

3           “(b) LONG-RANGE SERVICE AND INVESTMENT PRO-  
4           GRAM.—

5           “(1) PROGRAM CONTENT.—A long-range rail  
6           investment program included in a State rail plan  
7           under subsection (a)(5) shall include the following  
8           matters:

9                   “(A) Two lists for rail capital projects, 1  
10                  list for freight rail capital projects and 1 list for  
11                  intercity passenger rail capital projects.

12                  “(B) A detailed funding plan for the  
13                  projects.

14           “(2) PROJECT LIST CONTENT.—The lists of  
15           freight and intercity passenger rail capital projects  
16           shall contain—

17                   “(A) a description of the anticipated public  
18                  and private benefits of each such project; and

19                   “(B) a statement of the correlation be-  
20                  tween—

21                           “(i) public funding contributions for  
22                          the projects; and

23                           “(ii) the public benefits.

24           “(3) CONSIDERATIONS FOR PROJECT LIST.—In  
25           preparing the list of freight and intercity passenger

1 rail capital projects, a State rail transportation au-  
2 thority shall take into consideration the following  
3 matters:

4 “(A) Contributions made by non-Federal  
5 and non-State sources through user fees,  
6 matching funds, or other private capital involve-  
7 ment.

8 “(B) Rail capacity and congestion effects.

9 “(C) Effects to highway, aviation, and  
10 maritime capacity, congestion, or safety.

11 “(D) Regional balance.

12 “(E) Environmental impact.

13 “(F) Economic and employment impacts.

14 “(G) Projected ridership and other service  
15 measures for passenger rail projects.

16 **“§ 22505. Approval**

17 “The State rail plan approval authority established  
18 or designated under section 22501(b)(2) may approve a  
19 State rail plan for the purposes of this chapter if—

20 “(1) the plan meets all of the requirements ap-  
21 plicable to State plans under this chapter;

22 “(2) for each ready-to-commence project listed  
23 on the ranked list of freight and intercity passenger  
24 rail capital improvement projects under the plan—

1           “(A) the project meets all safety and envi-  
 2           ronmental requirements, including those pre-  
 3           scribed under the National Environmental Pol-  
 4           icy Act of 1969 (42 U.S.C. 4331 et seq.) that  
 5           are applicable to the project under law; and

6           “(B) the State has entered into an agree-  
 7           ment with any owner of rail infrastructure or  
 8           right-of-way directly affected by the project that  
 9           provides for the State to proceed with the  
 10          project and includes assurances regarding ca-  
 11          pacity and compensation for use of such infra-  
 12          structure or right-of-way, if applicable; and

13          “(3) the content of the plan is coordinated with  
 14          State transportation plans developed pursuant to  
 15          section 135 of title 23.

16   **“§ 22506. Definitions**

17          “In this chapter:

18               “(1) PRIVATE BENEFIT.—The term ‘private  
 19          benefit’—

20               “(A) means a benefit accrued to a person  
 21          or private entity, other than the National Rail-  
 22          road Passenger Corporation, that directly im-  
 23          proves the economic and competitive condition  
 24          of that person or entity through improved as-

1 sets, cost reductions, service improvements, or  
2 other means; and

3 “(B) shall be determined on a project-by-  
4 project basis, based upon an agreement between  
5 the State and the affected persons or private  
6 entities.

7 “(2) PUBLIC BENEFIT.—The term ‘public ben-  
8 efit’—

9 “(A) means a benefit accrued to the public  
10 in the form of enhanced mobility of people or  
11 goods, environmental protection or enhance-  
12 ment, congestion mitigation, enhanced trade  
13 and economic development, improved air quality  
14 or land use, more efficient energy use, enhanced  
15 public safety or security, reduction of public ex-  
16 penditures due to improved transportation effi-  
17 ciency or infrastructure preservation, and other  
18 positive community effects; and

19 “(B) shall be determined on a project-by-  
20 project basis, based upon an agreement between  
21 the State and the persons or private entities in-  
22 volved in the project.

23 “(3) STATE.—The term ‘State’ means any of  
24 the 50 States and the District of Columbia.

1           “(4) STATE RAIL TRANSPORTATION AUTHOR-  
 2           ITY.—The term ‘State rail transportation authority’  
 3           means the State agency or official responsible under  
 4           the direction of the Chief Executive of the State or  
 5           a State law for preparation, maintenance, coordina-  
 6           tion, and administration of the State rail plan under  
 7           this chapter.”.

8           (2) CLERICAL AMENDMENT.—The table of  
 9           chapters at the beginning of subtitle V of title 49,  
 10          United States Code, is amended by inserting after  
 11          the item relating to chapter 223 the following:

“225. STATE RAIL PLANS .....22501.”.

12 **SEC. 637. MODIFICATION OF TARGETED AREAS DES-**  
 13 **IGNATED FOR NEW MARKETS TAX CREDIT.**

14          (a) IN GENERAL.—Paragraph (2) of section 45D(e)  
 15          is amended to read as follows:

16               “(2) TARGETED POPULATIONS.—The Secretary  
 17               shall prescribe regulations under which 1 or more  
 18               targeted populations (within the meaning of section  
 19               103(20) of the Riegle Community Development and  
 20               Regulatory Improvement Act of 1994 (12 U.S.C.  
 21               4702(20))) may be treated as low-income commu-  
 22               nities. Such regulations shall include procedures for  
 23               determining which entities are qualified active low-  
 24               income community businesses with respect to such  
 25               populations.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to designations made by the Sec-  
 3 retary of the Treasury after the date of the enactment  
 4 of this Act.

5 **SEC. 638. MODIFICATION OF INCOME REQUIREMENT FOR**  
 6 **CENSUS TRACTS WITHIN HIGH MIGRATION**  
 7 **RURAL COUNTIES.**

8 (a) IN GENERAL.—Section 45D(e) (relating to low-  
 9 income community) is amended by adding at the end the  
 10 following new paragraph:

11 “(4) MODIFICATION OF INCOME REQUIREMENT  
 12 FOR CENSUS TRACTS WITHIN HIGH MIGRATION  
 13 RURAL COUNTIES.—

14 “(A) IN GENERAL.—In the case of a popu-  
 15 lation census tract located within a high migra-  
 16 tion rural county, paragraph (1)(B)(i) shall be  
 17 applied by substituting ‘85 percent’ for ‘80 per-  
 18 cent’.

19 “(B) HIGH MIGRATION RURAL COUNTY.—  
 20 For purposes of this paragraph, the term ‘high  
 21 migration rural county’ means any county  
 22 which, during the 20-year period ending with  
 23 the year in which the most recent census was  
 24 conducted, has a net out-migration of inhab-  
 25 itants from the county of at least 10 percent of

1           the population of the county at the beginning of  
2           such period.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall take effect as if included in the amend-  
5 ment made by section 121(a) of the Community Renewal  
6 Tax Relief Act of 2000.

7 **SEC. 639. CREDIT FOR INVESTMENT IN TECHNOLOGY TO**  
8 **MAKE MOTION PICTURES MORE ACCESSIBLE**  
9 **TO THE DEAF AND HARD OF HEARING.**

10          (a) **IN GENERAL.**—

11           (1) **ALLOWANCE OF CREDIT.**—Subpart D of  
12 part IV of subchapter A of chapter 1 (relating to  
13 business related credits), as amended by this Act, is  
14 amended by adding at the end the following new sec-  
15 tion:

16 **“SEC. 45T. EXPENDITURES TO PROVIDE ACCESS TO MO-**  
17 **TION PICTURES FOR THE DEAF AND HARD OF**  
18 **HEARING.**

19          “(a) **GENERAL RULE.**—For purposes of section 38,  
20 in the case of an eligible taxpayer, the motion picture ac-  
21 cessibility credit for any taxable year shall be an amount  
22 equal to 50 percent of the qualified expenditures made by  
23 the eligible taxpayer during the taxable year.

1       “(b) ELIGIBLE TAXPAYER.—For purposes of this  
2 section, the term ‘eligible taxpayer’ means a taxpayer who  
3 is in the business of—

4               “(1) showing motion pictures to the public in  
5 theaters, or

6               “(2) producing or distributing such motion pic-  
7 tures.

8       “(c) QUALIFIED EXPENDITURES.—For purposes of  
9 this section, the term ‘qualified expenditures’ means  
10 amounts paid or incurred by the taxpayer for the purpose  
11 of making motion pictures accessible to individuals who  
12 are deaf or hard of hearing through the use of captioning  
13 technology.

14       “(d) BASIS ADJUSTMENT.—For purposes of this sub-  
15 title, if a credit is allowed under this section with respect  
16 to any property, the basis of such property shall be re-  
17 duced by the amount of the credit so allowed.

18       “(e) NO DOUBLE BENEFIT.—In the case of the cred-  
19 it determined under this section, no deduction or credit  
20 shall be allowed for such amount under any other provi-  
21 sion of this chapter.”.

22               (2) CONFORMING AMENDMENTS.—

23                       (A) Section 38(b) (relating to general busi-  
24 ness credit), as amended by this Act, is amend-  
25 ed by striking “plus” at the end of paragraph



1           (30), by striking the period at the end of para-  
2           graph (31) and inserting “, plus”, and by add-  
3           ing at the end the following new paragraph:

4           “(32) the motion picture accessibility credit de-  
5           termined under section 45T(a).”.

6           (B) Subsection (a) of section 1016, as  
7           amended by this Act, is amended by striking  
8           “and” at the end of paragraph (38), by striking  
9           the period at the end of paragraph (39) and in-  
10          serting “, and”, and by adding at the end the  
11          following new paragraph:

12          “(40) in the case of property with respect to  
13          which a credit was allowed under section 45T, to the  
14          extent provided in section 45T(d).”.

15          (b) LIMITATION ON CARRYBACK.—Section 39(d) (re-  
16          lating to transition rules) is amended by adding at the  
17          end the following new paragraph:

18          “(16) NO CARRYBACK OF MOTION PICTURE AC-  
19          CESSIBILITY CREDIT BEFORE EFFECTIVE DATE.—  
20          No portion of the unused business credit for any  
21          taxable year which is attributable to the motion pic-  
22          ture accessibility credit determined under section  
23          45T may be carried to a taxable year beginning be-  
24          fore January 1, 2004.”.

1 (c) CLERICAL AMENDMENT.—The table of sections  
 2 for subpart D of part IV of subchapter A of chapter 1,  
 3 as amended by this Act, is amended by inserting after the  
 4 item relating to section 45S the following new item:

“Sec. 45T. Expenditures to provide access to motion pictures for  
 the deaf and hard of hearing.”.

5 (d) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to taxable years beginning after  
 7 December 31, 2003.

## 8 **Subtitle E—Miscellaneous**

### 9 **Provisions**

#### 10 **SEC. 641. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**

#### 11 **CHANGE OF CERTAIN BROWNFIELD SITES**

#### 12 **FROM UNRELATED BUSINESS TAXABLE IN-**

#### 13 **COME.**

14 (a) IN GENERAL.—Subsection (b) of section 512 (re-  
 15 lating to unrelated business taxable income), as amended  
 16 by this Act, is amended by adding at the end the following  
 17 new paragraph:

18 “(19) TREATMENT OF GAIN OR LOSS ON SALE  
 19 OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

20 “(A) IN GENERAL.—Notwithstanding para-  
 21 graph (5)(B), there shall be excluded any gain  
 22 or loss from the qualified sale, exchange, or  
 23 other disposition of any qualifying brownfield  
 24 property by an eligible taxpayer.

1           “(B) ELIGIBLE TAXPAYER.—For purposes  
2 of this paragraph—

3           “(i) IN GENERAL.—The term ‘eligible  
4 taxpayer’ means, with respect to a prop-  
5 erty, any organization exempt from tax  
6 under section 501(a) which—

7           “(I) acquires from an unrelated  
8 person a qualifying brownfield prop-  
9 erty, and

10          “(II) pays or incurs eligible re-  
11 mediation expenditures with respect to  
12 such property in an amount which ex-  
13 ceeds the greater of \$550,000 or 12  
14 percent of the fair market value of the  
15 property at the time such property  
16 was acquired by the eligible taxpayer,  
17 determined as if there was not a pres-  
18 ence of a hazardous substance, pollut-  
19 ant, or contaminant on the property  
20 which is complicating the expansion,  
21 redevelopment, or reuse of the prop-  
22 erty.

23          “(ii) EXCEPTION.—Such term shall  
24 not include any organization which is—

1           “(I) potentially liable under sec-  
2           tion 107 of the Comprehensive Envi-  
3           ronmental Response, Compensation,  
4           and Liability Act of 1980 with respect  
5           to the qualifying brownfield property,

6           “(II) affiliated with any other  
7           person which is so potentially liable  
8           through any direct or indirect familial  
9           relationship or any contractual, cor-  
10          porate, or financial relationship (other  
11          than a contractual, corporate, or fi-  
12          nancial relationship which is created  
13          by the instruments by which title to  
14          any qualifying brownfield property is  
15          conveyed or financed or by a contract  
16          of sale of goods or services), or

17          “(III) the result of a reorganiza-  
18          tion of a business entity which was so  
19          potentially liable.

20          “(C) QUALIFYING BROWNFIELD PROP-  
21          ERTY.—For purposes of this paragraph—

22               “(i) IN GENERAL.—The term ‘quali-  
23               fying brownfield property’ means any real  
24               property which is certified, before the tax-  
25               payer incurs any eligible remediation ex-

penditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

“(ii) REQUEST FOR CERTIFICATION.—

Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property’s reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property’s presence on a local, State, or Federal list of brownfields

1 or contaminated property) and other envi-  
2 ronmental assessments prepared or ob-  
3 tained by the taxpayer.

4 “(D) QUALIFIED SALE, EXCHANGE, OR  
5 OTHER DISPOSITION.—For purposes of this  
6 paragraph—

7 “(i) IN GENERAL.—A sale, exchange,  
8 or other disposition of property shall be  
9 considered as qualified if—

10 “(I) such property is transferred  
11 by the eligible taxpayer to an unre-  
12 lated person, and

13 “(II) within 1 year of such trans-  
14 fer the eligible taxpayer has received a  
15 certification from the Environmental  
16 Protection Agency or an appropriate  
17 State agency (within the meaning of  
18 section 198(c)(4)) in the State in  
19 which such property is located that, as  
20 a result of the eligible taxpayer’s re-  
21 mediation actions, such property  
22 would not be treated as a qualifying  
23 brownfield property in the hands of  
24 the transferee.

1 For purposes of subclause (II), before  
2 issuing such certification, the Environ-  
3 mental Protection Agency or appropriate  
4 State agency shall respond to comments  
5 received pursuant to clause (ii)(V) in the  
6 same form and manner as required under  
7 section 117(b) of the Comprehensive Envi-  
8 ronmental Response, Compensation, and  
9 Liability Act of 1980 (as in effect on the  
10 date of the enactment of this paragraph).

11 “(ii) REQUEST FOR CERTIFICATION.—  
12 Any request by an eligible taxpayer for a  
13 certification described in clause (i) shall be  
14 made not later than the date of the trans-  
15 fer and shall include a sworn statement by  
16 the eligible taxpayer certifying the fol-  
17 lowing:

18 “(I) Remedial actions which com-  
19 ply with all applicable or relevant and  
20 appropriate requirements (consistent  
21 with section 121(d) of the Com-  
22 prehensive Environmental Response,  
23 Compensation, and Liability Act of  
24 1980) have been substantially com-  
25 pleted, such that there are no haz-

1           ardous substances, pollutants, or con-  
2           taminants which complicate the ex-  
3           pansion, redevelopment, or reuse of  
4           the property given the property's rea-  
5           sonably anticipated future land uses  
6           or capacity for uses of the property.

7                   “(II) The reasonably anticipated  
8           future land uses or capacity for uses  
9           of the property are more economically  
10          productive or environmentally bene-  
11          ficial than the uses of the property in  
12          existence on the date of the certifi-  
13          cation described in subparagraph  
14          (C)(i). For purposes of the preceding  
15          sentence, use of property as a landfill  
16          or other hazardous waste facility shall  
17          not be considered more economically  
18          productive or environmentally bene-  
19          ficial.

20                   “(III) A remediation plan has  
21          been implemented to bring the prop-  
22          erty into compliance with all applica-  
23          ble local, State, and Federal environ-  
24          mental laws, regulations, and stand-  
25          ards and to ensure that the remedi-



1           ation protects human health and the  
2           environment.

3                   “(IV) The remediation plan de-  
4           scribed in subclause (III), including  
5           any physical improvements required to  
6           remediate the property, is either com-  
7           plete or substantially complete, and, if  
8           substantially complete, sufficient mon-  
9           itoring, funding, institutional controls,  
10          and financial assurances have been  
11          put in place to ensure the complete  
12          remediation of the property in accord-  
13          ance with the remediation plan as  
14          soon as is reasonably practicable after  
15          the sale, exchange, or other disposi-  
16          tion of such property.

17                   “(V) Public notice and the oppor-  
18          tunity for comment on the request for  
19          certification was completed before the  
20          date of such request. Such notice and  
21          opportunity for comment shall be in  
22          the same form and manner as re-  
23          quired for public participation re-  
24          quired under section 117(a) of the  
25          Comprehensive Environmental Re-

1 sponse, Compensation, and Liability  
 2 Act of 1980 (as in effect on the date  
 3 of the enactment of this paragraph).  
 4 For purposes of this subclause, public  
 5 notice shall include, at a minimum,  
 6 publication in a major local newspaper  
 7 of general circulation.

8 “(iii) ATTACHMENT TO TAX RE-  
 9 TURNS.—A copy of each of the requests  
 10 for certification described in clause (ii) of  
 11 subparagraph (C) and this subparagraph  
 12 shall be included in the tax return of the  
 13 eligible taxpayer (and, where applicable, of  
 14 the qualifying partnership) for the taxable  
 15 year during which the transfer occurs.

16 “(iv) SUBSTANTIAL COMPLETION.—  
 17 For purposes of this subparagraph, a re-  
 18 medial action is substantially complete  
 19 when any necessary physical construction  
 20 is complete, all immediate threats have  
 21 been eliminated, and all long-term threats  
 22 are under control.

23 “(E) ELIGIBLE REMEDIATION EXPENDI-  
 24 TURES.—For purposes of this paragraph—

1           “(i) IN GENERAL.—The term ‘eligible  
2           remediation expenditures’ means, with re-  
3           spect to any qualifying brownfield prop-  
4           erty, any amount paid or incurred by the  
5           eligible taxpayer to an unrelated third per-  
6           son to obtain a Phase I environmental site  
7           assessment of the property, and any  
8           amount so paid or incurred after the date  
9           of the certification described in subpara-  
10          graph (C)(i) for goods and services nec-  
11          essary to obtain a certification described in  
12          subparagraph (D)(i) with respect to such  
13          property, including expenditures—

14                 “(I) to manage, remove, control,  
15                 contain, abate, or otherwise remediate  
16                 a hazardous substance, pollutant, or  
17                 contaminant on the property,

18                 “(II) to obtain a Phase II envi-  
19                 ronmental site assessment of the  
20                 property, including any expenditure to  
21                 monitor, sample, study, assess, or oth-  
22                 erwise evaluate the release, threat of  
23                 release, or presence of a hazardous  
24                 substance, pollutant, or contaminant  
25                 on the property,

1 “(III) to obtain environmental  
2 regulatory certifications and approvals  
3 required to manage the remediation  
4 and monitoring of the hazardous sub-  
5 stance, pollutant, or contaminant on  
6 the property, and

7 “(IV) regardless of whether it is  
8 necessary to obtain a certification de-  
9 scribed in subparagraph (D)(i)(II), to  
10 obtain remediation cost-cap or stop-  
11 loss coverage, re-opener or regulatory  
12 action coverage, or similar coverage  
13 under environmental insurance poli-  
14 cies, or financial guarantees required  
15 to manage such remediation and mon-  
16 itoring.

17 “(ii) EXCEPTIONS.—Such term shall  
18 not include—

19 “(I) any portion of the purchase  
20 price paid or incurred by the eligible  
21 taxpayer to acquire the qualifying  
22 brownfield property,

23 “(II) environmental insurance  
24 costs paid or incurred to obtain legal  
25 defense coverage, owner/operator li-

1 ability coverage, lender liability cov-  
2 erage, professional liability coverage,  
3 or similar types of coverage,

4 “(III) any amount paid or in-  
5 curred to the extent such amount is  
6 reimbursed, funded, or otherwise sub-  
7 sidized by grants provided by the  
8 United States, a State, or a political  
9 subdivision of a State for use in con-  
10 nection with the property, proceeds of  
11 an issue of State or local government  
12 obligations used to provide financing  
13 for the property the interest of which  
14 is exempt from tax under section 103,  
15 or subsidized financing provided (di-  
16 rectly or indirectly) under a Federal,  
17 State, or local program provided in  
18 connection with the property, or

19 “(IV) any expenditure paid or in-  
20 curred before the date of the enact-  
21 ment of this paragraph.

22 For purposes of subclause (III), the Sec-  
23 retary may issue guidance regarding the  
24 treatment of government-provided funds

1           for purposes of determining eligible reme-  
2           diation expenditures.

3           “(F) DETERMINATION OF GAIN OR  
4           LOSS.—For purposes of this paragraph, the de-  
5           termination of gain or loss shall not include an  
6           amount treated as gain which is ordinary in-  
7           come with respect to section 1245 or section  
8           1250 property, including amounts deducted as  
9           section 198 expenses which are subject to the  
10          recapture rules of section 198(e), if the tax-  
11          payer had deducted such amounts in the com-  
12          putation of its unrelated business taxable in-  
13          come.

14          “(G) SPECIAL RULES FOR PARTNER-  
15          SHIPS.—

16               “(i) IN GENERAL.—In the case of an  
17               eligible taxpayer which is a partner of a  
18               qualifying partnership which acquires, re-  
19               mediates, and sells, exchanges, or other-  
20               wise disposes of a qualifying brownfield  
21               property, this paragraph shall apply to the  
22               eligible taxpayer’s distributive share of the  
23               qualifying partnership’s gain or loss from  
24               the sale, exchange, or other disposition of  
25               such property.

1 “(ii) QUALIFYING PARTNERSHIP.—

2 The term ‘qualifying partnership’ means a  
3 partnership which—

4 “(I) has a partnership agreement  
5 which satisfies the requirements of  
6 section 514(c)(9)(B)(vi) at all times  
7 beginning on the date of the first cer-  
8 tification received by the partnership  
9 under subparagraph (C)(i),

10 “(II) satisfies the requirements  
11 of subparagraphs (B)(i), (C), (D), and  
12 (E), if ‘qualified partnership’ is sub-  
13 stituted for ‘eligible taxpayer’ each  
14 place it appears therein (except sub-  
15 paragraph (D)(iii)), and

16 “(III) is not an organization  
17 which would be prevented from consti-  
18 tuting an eligible taxpayer by reason  
19 of subparagraph (B)(ii).

20 “(iii) REQUIREMENT THAT TAX-EX-  
21 EMPT PARTNER BE A PARTNER SINCE  
22 FIRST CERTIFICATION.—This paragraph  
23 shall apply with respect to any eligible tax-  
24 payer which is a partner of a partnership  
25 which acquires, remediates, and sells, ex-

1 changes, or otherwise disposes of a quali-  
2 fying brownfield property only if such eligi-  
3 ble taxpayer was a partner of the quali-  
4 fying partnership at all times beginning on  
5 the date of the first certification received  
6 by the partnership under subparagraph  
7 (C)(i) and ending on the date of the sale,  
8 exchange, or other disposition of the prop-  
9 erty by the partnership.

10 “(iv) REGULATIONS.—The Secretary  
11 shall prescribe such regulations as are nec-  
12 essary to prevent abuse of the require-  
13 ments of this subparagraph, including  
14 abuse through—

15 “(I) the use of special allocations  
16 of gains or losses, or

17 “(II) changes in ownership of  
18 partnership interests held by eligible  
19 taxpayers.

20 “(H) SPECIAL RULES FOR MULTIPLE  
21 PROPERTIES.—

22 “(i) IN GENERAL.—An eligible tax-  
23 payer or a qualifying partnership of which  
24 the eligible taxpayer is a partner may  
25 make a 1-time election to apply this para-



1 graph to more than 1 qualifying brownfield  
2 property by averaging the eligible remedi-  
3 ation expenditures for all such properties  
4 acquired during the election period. If the  
5 eligible taxpayer or qualifying partnership  
6 makes such an election, the election shall  
7 apply to all qualified sales, exchanges, or  
8 other dispositions of qualifying brownfield  
9 properties the acquisition and transfer of  
10 which occur during the period for which  
11 the election remains in effect.

12 “(ii) ELECTION.—An election under  
13 clause (i) shall be made with the eligible  
14 taxpayer’s or qualifying partnership’s time-  
15 ly filed tax return (including extensions)  
16 for the first taxable year for which the tax-  
17 payer or qualifying partnership intends to  
18 have the election apply. An election under  
19 clause (i) is effective for the period—

20 “(I) beginning on the date which  
21 is the first day of the taxable year of  
22 the return in which the election is in-  
23 cluded or a later day in such taxable  
24 year selected by the eligible taxpayer  
25 or qualifying partnership, and

1 “(II) ending on the date which is  
2 the earliest of a date of revocation se-  
3 lected by the eligible taxpayer or  
4 qualifying partnership, the date which  
5 is 8 years after the date described in  
6 subclause (I), or, in the case of an  
7 election by a qualifying partnership of  
8 which the eligible taxpayer is a part-  
9 ner, the date of the termination of the  
10 qualifying partnership.

11 “(iii) REVOCATION.—An eligible tax-  
12 payer or qualifying partnership may revoke  
13 an election under clause (i)(II) by filing a  
14 statement of revocation with a timely filed  
15 tax return (including extensions). A rev-  
16 ocation is effective as of the first day of  
17 the taxable year of the return in which the  
18 revocation is included or a later day in  
19 such taxable year selected by the eligible  
20 taxpayer or qualifying partnership. Once  
21 an eligible taxpayer or qualifying partner-  
22 ship revokes the election, the eligible tax-  
23 payer or qualifying partnership is ineligible  
24 to make another election under clause (i)

1 with respect to any qualifying brownfield  
2 property subject to the revoked election.

3 “(I) RECAPTURE.—If an eligible taxpayer  
4 excludes gain or loss from a sale, exchange, or  
5 other disposition of property to which an elec-  
6 tion under subparagraph (H) applies, and such  
7 property fails to satisfy the requirements of this  
8 paragraph, the unrelated business taxable in-  
9 come of the eligible taxpayer for the taxable  
10 year in which such failure occurs shall be deter-  
11 mined by including any previously excluded gain  
12 or loss from such sale, exchange, or other dis-  
13 position allocable to such taxpayer, and interest  
14 shall be determined at the overpayment rate es-  
15 tablished under section 6621 on any resulting  
16 tax for the period beginning with the due date  
17 of the return for the taxable year during which  
18 such sale, exchange, or other disposition oc-  
19 curred, and ending on the date of payment of  
20 the tax.

21 “(J) RELATED PERSONS.—For purposes of  
22 this paragraph, a person shall be treated as re-  
23 lated to another person if—

24 “(i) such person bears a relationship  
25 to such other person described in section

1           267(b) (determined without regard to  
 2           paragraph (9) thereof), or section  
 3           707(b)(1), determined by substituting ‘25  
 4           percent’ for ‘50 percent’ each place it ap-  
 5           pears therein, and

6                   “(ii) in the case such other person is  
 7           a nonprofit organization, if such person  
 8           controls directly or indirectly more than 25  
 9           percent of the governing body of such or-  
 10          ganization.”

11          (b) EXCLUSION FROM DEFINITION OF DEBT-FI-  
 12          NANCED PROPERTY.—Section 514(b)(1) (defining debt-fi-  
 13          nanced property) is amended by striking “or” at the end  
 14          of subparagraph (C), by striking the period at the end of  
 15          subparagraph (D) and inserting “; or”, and by inserting  
 16          after subparagraph (D) the following new subparagraph:

17                   “(E) any property the gain or loss from  
 18          the sale, exchange, or other disposition of which  
 19          would be excluded by reason of the provisions  
 20          of section 512(b)(19) in computing the gross  
 21          income of any unrelated trade or business.”.

22          (c) SAVINGS CLAUSE.—Nothing in the amendments  
 23          made by this section shall affect any duty, liability, or  
 24          other requirement imposed under any other Federal or  
 25          State law. Notwithstanding section 128(b) of the Com-

1 prehensive Environmental Response, Compensation, and  
 2 Liability Act of 1980, a certification provided by the Envi-  
 3 ronmental Protection Agency or an appropriate State  
 4 agency (within the meaning of section 198(c)(4) of the In-  
 5 ternal Revenue Code of 1986) shall not affect the liability  
 6 of any person under section 107(a) of such Act.

7 (d) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to any gain or loss on the sale,  
 9 exchange, or other disposition of any property acquired by  
 10 the taxpayer after December 31, 2004.

11 **SEC. 642. MODIFICATION OF UNRELATED BUSINESS IN-**  
 12 **COME LIMITATION ON INVESTMENT IN CER-**  
 13 **TAIN DEBT-FINANCED PROPERTIES.**

14 (a) IN GENERAL.—Section 514(c)(6) (relating to ac-  
 15 quisition indebtedness) is amended—

16 (1) by striking “include an obligation” and in-  
 17 serting “include—

18 “(A) an obligation”,

19 (2) by striking the period at the end and insert-  
 20 ing “, or”, and

21 (3) by adding at the end the following:

22 “(B) indebtedness incurred by a small  
 23 business investment company licensed under the  
 24 Small Business Investment Act of 1958 which  
 25 is evidenced by a debenture—

1 “(i) issued by such company under  
2 section 303(a) of such Act, and

3 “(ii) held or guaranteed by the Small  
4 Business Administration.”.

5 (b) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to acquisitions made on or after  
7 the date of the enactment of this Act.

8 **SEC. 643. CIVIL RIGHTS TAX RELIEF.**

9 (a) DEDUCTION ALLOWED WHETHER OR NOT TAX-  
10 PAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a)  
11 of section 62 (defining adjusted gross income) is amended  
12 by inserting after paragraph (18) the following new item:

13 “(19) COSTS INVOLVING DISCRIMINATION  
14 SUITS, ETC.—Any deduction allowable under this  
15 chapter for attorney fees and court costs paid by, or  
16 on behalf of, the taxpayer in connection with any ac-  
17 tion involving a claim of unlawful discrimination (as  
18 defined in subsection (e)) or a claim of a violation  
19 of subchapter III of chapter 37 of title 31, United  
20 States Code or a claim made under section  
21 1862(b)(3)(A) of the Social Security Act (42 U.S.C.  
22 1395y(b)(3)(A)). The preceding sentence shall not  
23 apply to any deduction in excess of the amount in-  
24 cludible in the taxpayer’s gross income for the tax-  
25 able year on account of a judgment or settlement

1 (whether by suit or agreement and whether as lump  
2 sum or periodic payments) resulting from such  
3 claim.”.

4 (b) UNLAWFUL DISCRIMINATION DEFINED.—Section  
5 62 is amended by adding at the end the following new  
6 subsection:

7 “(e) UNLAWFUL DISCRIMINATION DEFINED.—For  
8 purposes of subsection (a)(19), the term ‘unlawful dis-  
9 crimination’ means an act that is unlawful under any of  
10 the following:

11 “(1) Section 302 of the Civil Rights Act of  
12 1991 (2 U.S.C. 1202).

13 “(2) Section 201, 202, 203, 204, 205, 206, or  
14 207 of the Congressional Accountability Act of 1995  
15 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or  
16 1317).

17 “(3) The National Labor Relations Act (29  
18 U.S.C. 151 et seq.).

19 “(4) The Fair Labor Standards Act of 1938  
20 (29 U.S.C. 201 et seq.).

21 “(5) Section 4 or 15 of the Age Discrimination  
22 in Employment Act of 1967 (29 U.S.C. 623 or  
23 633a).

24 “(6) Section 501 or 504 of the Rehabilitation  
25 Act of 1973 (29 U.S.C. 791 or 794).

1           “(7) Section 510 of the Employee Retirement  
2           Income Security Act of 1974 (29 U.S.C. 1140).

3           “(8) Title IX of the Education Amendments of  
4           1972 (29 U.S.C. 1681 et seq.).

5           “(9) The Employee Polygraph Protection Act of  
6           1988 (29 U.S.C. 201 et seq.).

7           “(10) The Worker Adjustment and Retraining  
8           Notification Act (29 U.S.C. 2102 et seq.).

9           “(11) Section 105 of the Family and Medical  
10          Leave Act of 1993 (29 U.S.C. 2615).

11          “(12) Chapter 43 of title 38, United States  
12          Code (relating to employment and reemployment  
13          rights of members of the uniformed services).

14          “(13) Section 1977, 1979, or 1980 of the Re-  
15          vised Statutes (42 U.S.C. 1981, 1983, or 1985).

16          “(14) Section 703, 704, or 717 of the Civil  
17          Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3,  
18          or 2000e–16).

19          “(15) Section 804, 805, 806, 808, or 818 of the  
20          Fair Housing Act (42 U.S.C. 3604, 3605, 3606,  
21          3608, or 3617).

22          “(16) Section 102, 202, 302, or 503 of the  
23          Americans with Disabilities Act of 1990 (42 U.S.C.  
24          12112, 12132, 12182, or 12203).



1           “(17) Any provision of Federal law (popularly  
2       known as whistleblower protection provisions) pro-  
3       hibiting the discharge of an employee, the discrimi-  
4       nation against an employee, or any other form of re-  
5       taliation or reprisal against an employee for assert-  
6       ing rights or taking other actions permitted under  
7       Federal law.

8           “(18) Any provision of Federal, State, or local  
9       law, or common law claims permitted under Federal,  
10      State, or local law—

11                   “(i) providing for the enforcement of  
12                   civil rights, or

13                   “(ii) regulating any aspect of the em-  
14                   ployment relationship, including claims for  
15                   wages, compensation, or benefits, or pro-  
16                   hibiting the discharge of an employee, the  
17                   discrimination against an employee, or any  
18                   other form of retaliation or reprisal against  
19                   an employee for asserting rights or taking  
20                   other actions permitted by law.”.

21       (c) EFFECTIVE DATE.—The amendments made by  
22       this section shall apply to fees and costs paid after Decem-  
23       ber 31, 2002, with respect to any judgment or settlement  
24       occurring after such date.

1 **SEC. 644. EXCLUSION FOR PAYMENTS TO INDIVIDUALS**  
 2 **UNDER NATIONAL HEALTH SERVICE CORPS**  
 3 **LOAN REPAYMENT PROGRAM AND CERTAIN**  
 4 **STATE LOAN REPAYMENT PROGRAMS.**

5 (a) IN GENERAL.—Section 108(f) (relating to stu-  
 6 dent loans) is amended by adding at the end the following  
 7 new paragraph:

8 “(4) PAYMENTS UNDER NATIONAL HEALTH  
 9 SERVICE CORPS LOAN REPAYMENT PROGRAM AND  
 10 CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In  
 11 the case of an individual, gross income shall not in-  
 12 clude any amount received under section 338B(g) of  
 13 the Public Health Service Act or under a State pro-  
 14 gram described in section 338I of such Act.”.

15 (b) TREATMENT FOR PURPOSES OF EMPLOYMENT  
 16 TAXES.—Each of the following provisions is amended by  
 17 inserting “108(f)(4),” after “74(c),”:

18 (1) Section 3121(a)(20).

19 (2) Section 3231(e)(5).

20 (3) Section 3306(b)(16).

21 (4) Section 3401(a)(19).

22 (5) Section 209(a)(17) of the Social Security  
 23 Act.

24 (c) EFFECTIVE DATE.—The amendments made by  
 25 this section shall apply to amounts received by an indi-

1 vidual in taxable years beginning after December 31,  
2 2003.

3 **SEC. 645. CERTAIN EXPENSES OF RURAL LETTER CAR-**  
4 **RIERS.**

5 (a) IN GENERAL.—Section 162(o) (relating to treat-  
6 ment of certain reimbursed expenses of rural mail car-  
7 riers) is amended by redesignating paragraph (2) as para-  
8 graph (3) and by inserting after paragraph (1) the fol-  
9 lowing:

10 “(2) SPECIAL RULE WHERE EXPENSES EXCEED  
11 REIMBURSEMENTS.—Notwithstanding paragraph  
12 (1)(A), if the expenses incurred by an employee for  
13 the use of a vehicle in performing services described  
14 in paragraph (1) exceed the qualified reimburse-  
15 ments for such expenses, such excess shall be taken  
16 into account in computing the miscellaneous  
17 itemized deductions of the employee under section  
18 67.”.

19 (b) CONFORMING AMENDMENT.—The heading for  
20 section 162(o) is amended by striking “REIMBURSED”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to taxable years beginning after  
23 December 31, 2003.

1 **SEC. 646. METHOD OF ACCOUNTING FOR NAVAL SHIP-**  
2 **BUILDERS.**

3 (a) **IN GENERAL.**—In the case of a qualified naval  
4 ship contract, the taxable income of such contract during  
5 the 5-taxable year period beginning with the taxable year  
6 in which the contract commencement date occurs shall be  
7 determined under a method identical to the method used  
8 in the case of a qualified ship contract (as defined in sec-  
9 tion 10203(b)(2)(B) of the Revenue Act of 1987).

10 (b) **RECAPTURE OF TAX BENEFIT.**—In the case of  
11 a qualified naval ship contract to which subsection (a) ap-  
12 plies, the taxpayer's tax imposed by chapter 1 of the Inter-  
13 nal Revenue Code of 1986 for the first taxable year fol-  
14 lowing the 5-taxable year period described in subsection  
15 (a) shall be increased by the excess (if any) of—

16 (1) the amount of tax which would have been  
17 imposed during such period if this section had not  
18 been enacted, over

19 (2) the amount of tax so imposed during such  
20 period.

21 (c) **QUALIFIED NAVAL SHIP CONTRACT.**—For pur-  
22 poses of this section—

23 (1) **IN GENERAL.**—The term “qualified naval  
24 ship contract” means any contract or portion thereof  
25 that is for the construction in the United States of  
26 1 ship or submarine for the Federal Government if

1 the taxpayer reasonably expects the acceptance date  
 2 will occur no later than 9 years after the construc-  
 3 tion commencement date.

4 (2) ACCEPTANCE DATE.—The term “acceptance  
 5 date” means the date 1 year after the date on which  
 6 the Federal Government issues a letter of acceptance  
 7 or other similar document for the ship or submarine.

8 (3) CONSTRUCTION COMMENCEMENT DATE.—  
 9 The term “construction commencement date” means  
 10 the date on which the physical fabrication of any  
 11 section or component of the ship or submarine be-  
 12 gins.

13 (d) EFFECTIVE DATE.—This section shall apply to  
 14 contracts for ships or submarines with respect to which  
 15 the construction commencement date occurs after the date  
 16 of the enactment of this Act.

17 **SEC. 647. SUSPENSION OF POLICYHOLDERS SURPLUS AC-**  
 18 **COUNT PROVISIONS.**

19 (a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-  
 20 1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815  
 21 (relating to distributions to shareholders from pre-1984  
 22 policyholders surplus account) is amended by adding at  
 23 the end the following:

24 “(g) SPECIAL RULES APPLICABLE DURING 2004  
 25 AND 2005.—In the case of any taxable year of a stock

1 life insurance company beginning after December 31,  
 2 2003, and before January 1, 2006—

3 “(1) the amount under subsection (a)(2) for  
 4 such taxable year shall be treated as zero, and

5 “(2) notwithstanding subsection (b), in deter-  
 6 mining any subtractions from an account under sub-  
 7 sections (c)(3) and (d)(3), any distribution to share-  
 8 holders during such taxable year shall be treated as  
 9 made first out of the policyholders surplus account,  
 10 then out of the shareholders surplus account, and fi-  
 11 nally out of other accounts.”.

12 (b) EFFECTIVE DATE.—The amendment made by  
 13 this section shall apply to taxable years beginning after  
 14 December 31, 2003.

15 **SEC. 648. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**  
 16 **TIVES WITHOUT REDUCING PATRONAGE**  
 17 **DIVIDENDS.**

18 (a) IN GENERAL.—Subsection (a) of section 1388  
 19 (relating to patronage dividend defined) is amended by  
 20 adding at the end the following new sentence: “For pur-  
 21 poses of paragraph (3), net earnings shall not be reduced  
 22 by amounts paid during the year as dividends on capital  
 23 stock or other proprietary capital interests of the organiza-  
 24 tion to the extent that the articles of incorporation or by-  
 25 laws of such organization or other contract with patrons

1 provide that such dividends are in addition to amounts  
 2 otherwise payable to patrons which are derived from busi-  
 3 ness done with or for patrons during the taxable year.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
 5 this section shall apply to distributions in taxable years  
 6 beginning after the date of the enactment of this Act.

7 **SEC. 649. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**  
 8 **COUNT OF WEATHER-RELATED CONDITIONS.**

9 (a) REPLACEMENT OF LIVESTOCK WITH OTHER  
 10 FARM PROPERTY.—Subsection (f) of section 1033 (relat-  
 11 ing to involuntary conversions) is amended—

12 (1) by inserting “drought, flood, or other  
 13 weather-related conditions, or” after “because of”,

14 (2) by inserting “in the case of soil contamina-  
 15 tion or other environmental contamination” after  
 16 “including real property”, and

17 (3) by striking “WHERE THERE HAS BEEN  
 18 ENVIRONMENTAL CONTAMINATION” in the heading  
 19 and inserting “IN CERTAIN CASES”.

20 (b) EXTENSION OF REPLACEMENT PERIOD OF IN-  
 21 VOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e)  
 22 of section 1033 (relating to involuntary conversions) is  
 23 amended—

24 (1) by striking “CONDITIONS.—For purposes”  
 25 and inserting “CONDITIONS.—

1 “(1) IN GENERAL.—For purposes”, and

2 (2) by adding at the end the following new  
3 paragraph:

4 “(2) EXTENSION OF REPLACEMENT PERIOD.—

5 “(A) IN GENERAL.—In the case of  
6 drought, flood, or other weather-related condi-  
7 tions described in paragraph (1) which result in  
8 the area being designated as eligible for assist-  
9 ance by the Federal Government, subsection  
10 (a)(2)(B) shall be applied with respect to any  
11 converted property by substituting ‘4 years’ for  
12 ‘2 years’.

13 “(B) FURTHER EXTENSION BY SEC-  
14 RETARY.—The Secretary may extend on a re-  
15 gional basis the period for replacement under  
16 this section (after the application of subpara-  
17 graph (A)) for such additional time as the Sec-  
18 retary determines appropriate if the weather-re-  
19 lated conditions which resulted in such applica-  
20 tion continue for more than 3 years.”.

21 (c) INCOME INCLUSION RULES.—Section 451(e) (re-  
22 lating to special rule for proceeds from livestock sold on  
23 account of drought, flood, or other weather-related condi-  
24 tions) is amended by adding at the end the following new  
25 paragraph:



1           “(3) SPECIAL ELECTION RULES.—If section  
2           1033(e)(2) applies to a sale or exchange of livestock  
3           described in paragraph (1), the election under para-  
4           graph (1) shall be deemed valid if made during the  
5           replacement period described in such section.”.

6           (d) EFFECTIVE DATE.—The amendments made by  
7           this section shall apply to taxable years beginning after  
8           December 31, 2001.

9           **SEC. 650. MOTOR VEHICLE DEALER TRANSITIONAL ASSIST-**  
10           **ANCE.**

11           (a) IN GENERAL.—For purposes of subtitle A of the  
12           Internal Revenue Code of 1986, in the case of a taxpayer  
13           who elects the application of this section and who was a  
14           party to a motor vehicle sales and service agreement with  
15           a motor vehicle manufacturer who announced in December  
16           2000 that it would phase-out the motor vehicle brand to  
17           which such agreement relates—

18           (1) amounts received by such taxpayer from  
19           such manufacturer on account of the termination of  
20           such agreement (hereafter in this section referred to  
21           as “termination payment”) are considered to be re-  
22           ceived for property used in the trade or business of  
23           a motor vehicle retail sales and service dealership,  
24           and

1           (2) to the extent such termination payment is  
2       reinvested in property used in a motor vehicle retail  
3       sales and service dealership located within the  
4       United States, such property shall qualify as like-  
5       kind replacement property to which section 1031 of  
6       the Internal Revenue Code of 1986 shall apply with  
7       the following modifications:

8           (A) Such section shall be applied without  
9       regard to subparagraphs (A) and (B)(ii) of sub-  
10      section (a)(3).

11          (B) The period described in section  
12      1031(a)(3)(B) of such Code shall be applied by  
13      substituting “2 years” for “180 days”.

14      (b) RULES FOR ELECTION.—

15          (1) FORM OF ELECTION.—The taxpayer shall  
16      make an election under this section in such form  
17      and manner as the Secretary of the Treasury may  
18      prescribe and shall include in such election the  
19      amount of the termination payment received, the  
20      identification of the replacement property purchased,  
21      and such other information as the Secretary may  
22      prescribe.

23          (2) ELECTION ON AMENDED RETURN.—The  
24      Secretary of the Treasury shall permit an election  
25      under this section on an amended tax return for tax-

1       able years beginning before the date of the enact-  
2       ment of this Act.

3       (c) STATUTE OF LIMITATIONS.—Notwithstanding the  
4       provisions of any other law or rule of law, the statutory  
5       period for the assessment for any deficiency attributable  
6       to any termination payment gain shall be extended until  
7       3 years after the date the Secretary of the Treasury is  
8       notified by the taxpayer of the like-kind replacement prop-  
9       erty or an intention not to replace.

10       (d) EFFECTIVE DATE.—This section shall apply to  
11       amounts received after December 12, 2000, in taxable  
12       years ending after such date.

13       **SEC. 651. EXPANSION OF DESIGNATED RENEWAL COMMU-**  
14       **NITY AREA BASED ON 2000 CENSUS DATA.**

15       (a) RENEWAL COMMUNITIES.—Section 1400E (relat-  
16       ing to designation of renewal communities) is amended by  
17       adding at the end the following new subsection:

18       “(g) EXPANSION OF DESIGNATED AREAS.—

19               “(1) EXPANSION BASED ON 2000 CENSUS.—At  
20       the request of the nominating entity with respect to  
21       a renewal community, the Secretary of Housing and  
22       Urban Development may expand the area of a re-  
23       newal community to include any census tract—

24               “(A) which, at the time such community  
25       was nominated, met the requirements of this

1 section for inclusion in such community but for  
2 the failure of such tract to meet 1 or more of  
3 the population and poverty rate requirements of  
4 this section using 1990 census data, and

5 “(B) which meets all failed population and  
6 poverty rate requirements of this section using  
7 2000 census data.

8 “(2) EXPANSION TO CERTAIN AREAS WHICH DO  
9 NOT MEET POPULATION REQUIREMENTS.—

10 “(A) IN GENERAL.—At the request of 1 or  
11 more local governments and the State or States  
12 in which an area described in subparagraph (B)  
13 is located, the Secretary of Housing and Urban  
14 Development may expand a designated area to  
15 include such area.

16 “(B) AREA.—An area is described in this  
17 subparagraph if—

18 “(i) the area is adjacent to at least 1  
19 other area designated as a renewal commu-  
20 nity,

21 “(ii) the area has a population less  
22 than the population required under sub-  
23 section (c)(2)(C), and

24 “(iii)(I) the area meets the require-  
25 ments of subparagraphs (A) and (B) of

1 subsection (c)(2) and subparagraph (A) of  
 2 subsection (c)(3), or

3 “(II) the area contains a population  
 4 of less than 100 people.

5 “(3) APPLICABILITY.—Any expansion of a re-  
 6 newal community under this section shall take effect  
 7 as provided in subsection (b).”.

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 this subsection shall take effect as if included in the  
 10 amendments made by section 101 of the Community Re-  
 11 newal Tax Relief Act of 2000.

12 **SEC. 652. REDUCTION OF HOLDING PERIOD TO 12 MONTHS**  
 13 **FOR PURPOSES OF DETERMINING WHETHER**  
 14 **HORSES ARE SECTION 1231 ASSETS.**

15 (a) IN GENERAL.—Subparagraph (A) of section  
 16 1231(b)(3) (relating to definition of property used in the  
 17 trade or business) is amended by striking “and horses”.

18 (b) EFFECTIVE DATE.—The amendment made by  
 19 this section shall apply to taxable years beginning after  
 20 December 31, 2003.

21 **SEC. 653. BLUE RIBBON COMMISSION ON COMPREHENSIVE**  
 22 **TAX REFORM.**

23 (a) ESTABLISHMENT.—

24 (1) IN GENERAL.—There is established the  
 25 “Blue Ribbon Commission on Comprehensive Tax

1 Reform” (in this section referred to as the “Com-  
2 mission”).

3 (2) MEMBERSHIP.—

4 (A) COMPOSITION.—The Commission shall  
5 be composed of 17 members of whom—

6 (i) 3 shall be appointed by the major-  
7 ity leader of the Senate;

8 (ii) 3 shall be appointed by the minor-  
9 ity leader of the Senate;

10 (iii) 3 shall be appointed by the  
11 Speaker of the House of Representatives;

12 (iv) 3 shall be appointed by the minor-  
13 ity leader of the House of Representatives;  
14 and

15 (v) 5 shall be appointed by the Presi-  
16 dent, of which no more than 3 shall be of  
17 the same party as the President.

18 (B) FEDERAL EMPLOYEES.—The members  
19 of the Commission may be employees or former  
20 employees of the Federal Government.

21 (C) DATE.—The appointments of the  
22 members of the Commission shall be made not  
23 later than October 30, 2004.

24 (3) PERIOD OF APPOINTMENT; VACANCIES.—  
25 Members shall be appointed for the life of the Com-

1 mission. Any vacancy in the Commission shall not  
2 affect its powers, but shall be filled in the same  
3 manner as the original appointment.

4 (4) INITIAL MEETING.—Not later than 30 days  
5 after the date on which all members of the Commis-  
6 sion have been appointed, the Commission shall hold  
7 its first meeting.

8 (5) MEETINGS.—The Commission shall meet at  
9 the call of the Chairman.

10 (6) QUORUM.—A majority of the members of  
11 the Commission shall constitute a quorum, but a  
12 lesser number of members may hold hearings.

13 (7) CHAIRMAN AND VICE CHAIRMAN.—The  
14 President shall select a Chairman and Vice Chair-  
15 man from among its members.

16 (b) DUTIES OF THE COMMISSION.—

17 (1) STUDY.—The Commission shall conduct a  
18 thorough study of all matters relating to a com-  
19 prehensive reform of the Federal tax system, includ-  
20 ing the reform of the Internal Revenue Code of 1986  
21 and the implementation (if appropriate) of other  
22 types of tax systems.

23 (2) RECOMMENDATIONS.—The Commission  
24 shall develop recommendations on how to com-  
25 prehensively reform the Federal tax system in a

1 manner that generates appropriate revenue for the  
2 Federal Government.

3 (3) REPORT.—Not later than 18 months after  
4 the date on which all initial members of the commis-  
5 sion have been appointed pursuant to subsection  
6 (a)(2), the Commission shall submit a report to the  
7 President and Congress which shall contain a de-  
8 tailed statement of the findings and conclusions of  
9 the Commission, together with its recommendations  
10 for such legislation and administrative actions as it  
11 considers appropriate.

12 (c) POWERS OF THE COMMISSION.—

13 (1) HEARINGS.—The Commission may hold  
14 such hearings, sit and act at such times and places,  
15 take such testimony, and receive such evidence as  
16 the Commission considers advisable to carry out this  
17 Act.

18 (2) INFORMATION FROM FEDERAL AGENCIES.—  
19 The Commission may secure directly from any Fed-  
20 eral department or agency such information as the  
21 Commission considers necessary to carry out this  
22 Act. Upon request of the Chairman of the Commis-  
23 sion, the head of such department or agency shall  
24 furnish such information to the Commission.



1           (3) POSTAL SERVICES.—The Commission may  
2       use the United States mails in the same manner and  
3       under the same conditions as other departments and  
4       agencies of the Federal Government.

5           (4) GIFTS.—The Commission may accept, use,  
6       and dispose of gifts or donations of services or prop-  
7       erty.

8       (d) COMMISSION PERSONNEL MATTERS.—

9           (1) COMPENSATION OF MEMBERS.—Each mem-  
10      ber of the Commission who is not an officer or em-  
11      ployee of the Federal Government shall be com-  
12      pensated at a rate equal to the daily equivalent of  
13      the annual rate of basic pay prescribed for level IV  
14      of the Executive Schedule under section 5315 of title  
15      5, United States Code, for each day (including travel  
16      time) during which such member is engaged in the  
17      performance of the duties of the Commission. All  
18      members of the Commission who are officers or em-  
19      ployees of the United States shall serve without com-  
20      pensation in addition to that received for their serv-  
21      ices as officers or employees of the United States.

22          (2) TRAVEL EXPENSES.—The members of the  
23      Commission shall be allowed travel expenses, includ-  
24      ing per diem in lieu of subsistence, at rates author-  
25      ized for employees of agencies under subchapter I of

1 chapter 57 of title 5, United States Code, while  
2 away from their homes or regular places of business  
3 in the performance of services for the Commission.

4 (3) STAFF.—

5 (A) IN GENERAL.—The Chairman of the  
6 Commission may, without regard to the civil  
7 service laws and regulations, appoint and termi-  
8 nate an executive director and such other addi-  
9 tional personnel as may be necessary to enable  
10 the Commission to perform its duties. The em-  
11 ployment of an executive director shall be sub-  
12 ject to confirmation by the Commission.

13 (B) COMPENSATION.—The Chairman of  
14 the Commission may fix the compensation of  
15 the executive director and other personnel with-  
16 out regard to chapter 51 and subchapter III of  
17 chapter 53 of title 5, United States Code, relat-  
18 ing to classification of positions and General  
19 Schedule pay rates, except that the rate of pay  
20 for the executive director and other personnel  
21 may not exceed the rate payable for level V of  
22 the Executive Schedule under section 5316 of  
23 such title.

24 (4) DETAIL OF GOVERNMENT EMPLOYEES.—

25 Any Federal Government employee may be detailed

1 to the Commission without reimbursement, and such  
 2 detail shall be without interruption or loss of civil  
 3 service status or privilege.

4 (5) PROCUREMENT OF TEMPORARY AND INTER-  
 5 MITTENT SERVICES.—The Chairman of the Commis-  
 6 sion may procure temporary and intermittent serv-  
 7 ices under section 3109(b) of title 5, United States  
 8 Code, at rates for individuals which do not exceed  
 9 the daily equivalent of the annual rate of basic pay  
 10 prescribed for level V of the Executive Schedule  
 11 under section 5316 of such title.

12 (e) TERMINATION OF THE COMMISSION.—The Com-  
 13 mission shall terminate 90 days after the date on which  
 14 the Commission submits its report under subsection (b).

15 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
 16 are authorized to be appropriated such sums as are nec-  
 17 essary to the Commission to carry out this section.

18 **SEC. 654. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH**  
 19 **RESPECT TO S CORPORATION STOCK.**

20 (a) IN GENERAL.—Section 4975(d) of the Internal  
 21 Revenue Code of 1986 is amended by adding at the end  
 22 the following new flush sentences:

23 “A plan shall not be treated as violating the requirements  
 24 of section 401, 409, or subsection (e)(7), or as engaging  
 25 in a prohibited transaction for purposes of paragraph (3),

1 merely by reason of any distribution described in section  
 2 1368(a) with respect to S corporation stock which con-  
 3 stitutes qualifying employer securities if the distribution  
 4 is, in accordance with the plan provisions, used to make  
 5 payments on a loan described in paragraph (3) the pro-  
 6 ceeds of which were used to acquire the qualifying em-  
 7 ployer securities (whether or not allocated to participants).  
 8 The preceding sentence shall not apply in the case of a  
 9 distribution which is paid with respect to any employer  
 10 security which is allocated to a participant unless the plan  
 11 provides that employer securities with a fair market value  
 12 of not less than the amount of such distribution are allo-  
 13 cated to such participant for the year which (but for the  
 14 preceding sentence) such distribution would have been al-  
 15 located to such participant.”

16 (b) EFFECTIVE DATE.—The amendment made by  
 17 this section shall take effect on January 1, 1998.

18 **SEC. 655. CLARIFICATION OF WORKING CAPITAL FOR REA-**  
 19 **SONABLY ANTICIPATED NEEDS OF A BUSI-**  
 20 **NESS FOR PURPOSES OF ACCUMULATED**  
 21 **EARNINGS TAX.**

22 (a) IN GENERAL.—Section 537(b) (relating to special  
 23 rules) is amended by adding at the end the following new  
 24 paragraph:

1           “(6) WORKING CAPITAL.—The reasonably an-  
2           ticipated needs of a business for any taxable year  
3           shall include working capital for the business in an  
4           amount which is not less than the sum of the cost  
5           of goods, operating expenses, taxes, and interest ex-  
6           pense which the business incurred during the pre-  
7           ceding taxable year. Any amounts incurred as part  
8           of a plan a principal purpose of which is to increase  
9           the limitation under this subsection shall not be  
10          taken into account.”.

11          (b) EFFECTIVE DATE.—The amendment made by  
12          this section shall apply to taxable years beginning after  
13          December 31, 2003, and before January 1, 2009.

14          **SEC. 656. TAX TREATMENT OF STATE OWNERSHIP OF RAIL-**  
15                                   **ROAD REAL ESTATE INVESTMENT TRUST.**

16          (a) IN GENERAL.—If a State owns all of the out-  
17          standing stock of a corporation which is a real estate in-  
18          vestment trust, which is a non-operating class III railroad,  
19          and substantially all of the activities of which consist of  
20          the ownership, leasing, and operation by such corporation  
21          of facilities, equipment, and other property used by the  
22          corporation or other persons in railroad transportation,  
23          then, for purposes of section 115 of the Internal Revenue  
24          Code of 1986—

1           (1) income derived from such activities by the  
2           corporation shall be treated as accruing to the State,  
3           and

4           (2) such activities shall be treated as the exer-  
5           cise of an essential governmental function of the  
6           State to the extent such activities are of a type  
7           which are an essential government function (within  
8           the meaning of section 115 of such Code).

9           (b) GAIN OR LOSS NOT RECOGNIZED ON CONVER-  
10          SION.—Notwithstanding section 337(d) of the Internal  
11          Revenue Code of 1986—

12           (1) no gain or loss shall be recognized under  
13           section 336 or 337 of such Code, and

14           (2) no change in basis of the property of such  
15           corporation shall occur,  
16          because of any change of status of the corporation to a  
17          tax-exempt entity by reason of the application of sub-  
18          section (a).

19           (c) TAX-EXEMPT FINANCING.—Any obligation issued  
20          by an entity described in subsection (a) shall be treated  
21          as an obligation of the State for purposes of applying sec-  
22          tion 103 and part IV of subchapter B of chapter 1 of the  
23          Internal Revenue Code of 1986.

24           (d) DEFINITIONS.—For purposes of this section—

1           (1) REAL ESTATE INVESTMENT TRUST.—The  
2           term “real estate investment trust” has the meaning  
3           given such term by section 856(a) of the Internal  
4           Revenue Code of 1986.

5           (2) NON-OPERATING CLASS III RAILROAD.—The  
6           term “non-operating class III railroad” has the  
7           meaning given such term by part A of subtitle IV of  
8           title 49, United States Code (49 U.S.C. 10101 et  
9           seq.) and the regulations thereunder.

10          (3) STATE.—The term “State” includes—

11                   (A) the District of Columbia and any pos-  
12                   session of the United States, and

13                   (B) any authority, agency, or public cor-  
14                   poration of a State.

15          (e) APPLICABILITY.—

16           (1) IN GENERAL.—Except as provided in para-  
17           graph (2), this section shall apply on and after the  
18           date on which a State becomes the owner of all of  
19           the outstanding stock of a corporation described in  
20           subsection (a).

21           (2) EXCEPTION.—This section shall not apply  
22           to any State which—

23                   (A) becomes the owner of all of the voting  
24                   stock of a corporation described in subsection

25                   (a) after December 31, 2003, or

1 (B) becomes the owner of all of the out-  
2 standing stock of a corporation described in  
3 subsection (a) after December 31, 2005.

4 **SEC. 657. CLARIFICATION OF CONTRIBUTION IN AID OF**  
5 **CONSTRUCTION FOR WATER AND SEWERAGE**  
6 **DISPOSAL UTILITIES.**

7 (a) IN GENERAL.—Subparagraph (A) of section  
8 118(c)(3) (relating to definitions) is amended to read as  
9 follows:

10 “(A) CONTRIBUTION IN AID OF CONSTRU-  
11 TION.—The term ‘contribution in aid of con-  
12 struction’ shall be defined by regulations pre-  
13 scribed by the Secretary, except that such  
14 term—

15 “(i) shall include amounts paid as  
16 customer connection fees (including  
17 amounts paid to connect the customer’s  
18 water service line or sewer lateral line to  
19 the utility’s distribution or collection sys-  
20 tem or extend a main water or sewer line  
21 to provide service to a customer), and

22 “(ii) shall not include amounts paid as  
23 service charges for starting or stopping  
24 services.”.



1 (b) EFFECTIVE DATE.—The amendment made by  
 2 subsection (a) shall apply to contributions made after the  
 3 date of the enactment of this Act.

4 **SEC. 658. CREDIT FOR PURCHASE AND INSTALLATION OF**  
 5 **AGRICULTURAL WATER CONSERVATION SYS-**  
 6 **TEMS.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-  
 8 chapter A of chapter 1 (relating to foreign tax credit, etc.)  
 9 is amended by adding at the end the following new section:  
 10 **“SEC. 30B. PURCHASE AND INSTALLATION OF AGRICUL-**  
 11 **TURAL WATER CONSERVATION SYSTEMS.**

12 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-  
 13 gible taxpayer, there shall be allowed as a credit against  
 14 the tax imposed by this chapter for the taxable year an  
 15 amount equal to 30 percent of the water conservation sys-  
 16 tem expenses paid or incurred by the taxpayer during such  
 17 year.

18 “(b) LIMITATIONS.—The credit allowed by subsection  
 19 (a) with respect to any acre of land which is served by  
 20 a water conservation system shall not exceed the excess  
 21 of—

22 “(1) \$500, over

23 “(2) the amount of credit allowed under this  
 24 section with respect to such acre for all prior taxable  
 25 years.

1 “(c) DEFINITIONS.—For purposes of this section—

2 “(1) ELIGIBLE TAXPAYER.—The term ‘eligible  
3 taxpayer’ means any taxpayer if—

4 “(A) at least 50 percent of such taxpayer’s  
5 gross income is normally derived from farm  
6 land, and

7 “(B) such taxpayer complies with all Fed-  
8 eral, State, and local water rights and environ-  
9 mental laws.

10 “(2) WATER CONSERVATION SYSTEM EX-  
11 PENSES.—

12 “(A) IN GENERAL.—The term ‘water con-  
13 servation system expenses’ means expenses for  
14 the purchase and installation of a water con-  
15 servation system but only if—

16 “(i) the land served by the water con-  
17 servation system is entirely in a county or  
18 county-equivalent area which has received,  
19 in the taxable year the expenses were paid  
20 or incurred or in any of the 3 preceding  
21 taxable years, a primary-county designa-  
22 tion due to drought by the Secretary of  
23 Agriculture, and

24 “(ii) such system is certified as saving  
25 at least 5 percent more irrigation water

1           than the irrigation system which was used  
2           on such land immediately prior to the in-  
3           stallation of such water conservation sys-  
4           tem.

5           For purposes of clause (ii), irrigation water sav-  
6           ings shall be determined and certified under  
7           regulations prescribed jointly by the Natural  
8           Resources Conservation Service of the Depart-  
9           ment of Agriculture and the Bureau of Rec-  
10          lamation of the Department of the Interior.  
11          Such regulations shall include a list of individ-  
12          uals or organizations qualified to make such  
13          certification.

14           “(B) WATER CONSERVATION SYSTEM.—

15          The term ‘water conservation system’ means,  
16          with respect to farm land—

17           “(i) new or replacement irrigation  
18           equipment and machinery, including sprin-  
19           klers, pipes, siphons, nozzles, pumps, mo-  
20           tors, and engines, and

21           “(ii) computer systems for irrigation  
22           and water management.

23           “(C) FARM LAND.—The term ‘farm land’  
24          means land used in a trade or business by the  
25          taxpayer or a tenant of the taxpayer for—

1 “(i) the production of crops, fruits, or  
2 other agricultural products,

3 “(ii) the raising, harvesting, or grow-  
4 ing of trees, or

5 “(iii) the sustenance of livestock.

6 “(d) YEAR EXPENDITURE MADE.—For purposes of  
7 this section, an expenditure with respect to a water con-  
8 servation system shall be treated as made when the origi-  
9 nal installation of the system is completed.

10 “(e) LIMITATION BASED ON AMOUNT OF TAX.—

11 “(1) LIABILITY FOR TAX.—The credit allowable  
12 under subsection (a) for any taxable year shall not  
13 exceed the excess (if any) of—

14 “(A) the regular tax for the taxable year,  
15 reduced by the sum of the credits allowable  
16 under subpart A and the preceding sections of  
17 this subpart, over

18 “(B) the tentative minimum tax for the  
19 taxable year.

20 “(2) CARRYFORWARD OF UNUSED CREDIT.—If  
21 the amount of the credit allowable under subsection  
22 (a) for any taxable year exceeds the limitation under  
23 paragraph (1) for the taxable year, the excess shall  
24 be carried to the succeeding taxable year and added

1 to the amount allowable as a credit under subsection  
 2 (a) for such succeeding taxable year.

3 “(f) DENIAL OF DOUBLE BENEFIT.—No deduction  
 4 shall be allowed under this chapter with respect to any  
 5 expense which is taken into account in determining the  
 6 credit under this section, and any increase in the basis  
 7 of any property which would (but for this subsection) re-  
 8 sult from such expense shall be reduced by the amount  
 9 of credit allowed under this section for such expense.

10 “(g) TERMINATION.—This section shall not apply to  
 11 amounts paid or incurred with respect any water conserva-  
 12 tion system the installation of which is completed after  
 13 December 31, 2006.”.

14 (b) TECHNICAL AMENDMENT.—Subsection (a) of  
 15 section 1016, as amended by this Act, is amended by strik-  
 16 ing “and” at the end of paragraph (30), by striking the  
 17 period at the end of paragraph (31) and inserting “; and”,  
 18 and by adding at the end the following new paragraph:

19 “(32) to the extent provided in section 30B(f),  
 20 in the case of amounts with respect to which a credit  
 21 has been allowed under section 30B.”.

22 (c) CLERICAL AMENDMENT.—The table of sections  
 23 for subpart B of part IV of subchapter A of chapter 1  
 24 is amended by adding at the end the following new item:

“Sec. 30B. Purchase and installation of agricultural water con-  
 servation systems.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to amounts paid or incurred after  
 3 the date of the enactment of this Act with respect any  
 4 water conservation system the installation of which is com-  
 5 pleted after December 31, 2004.

6 **SEC. 659. MODIFICATION OF INVOLUNTARY CONVERSION**  
 7 **RULES FOR BUSINESSES AFFECTED BY THE**  
 8 **SEPTEMBER 11TH TERRORIST ATTACKS.**

9 (a) IN GENERAL.—Subsection (g) of section 1400L  
 10 is amended to read as follows:

11 “(g) MODIFICATION OF RULES APPLICABLE TO NON-  
 12 RECOGNITION OF GAIN.—In the case of property which  
 13 is compulsorily or involuntarily converted as a result of  
 14 the terrorist attacks on September 11, 2001, in the New  
 15 York Liberty Zone—

16 “(1) which was held by a corporation which is  
 17 a member of an affiliated group filing a consolidated  
 18 return, such corporation shall be treated as satis-  
 19 fying the purchase requirement of section  
 20 1033(a)(2) with respect to such property to the ex-  
 21 tent such requirement is satisfied by another mem-  
 22 ber of the group, and

23 “(2) notwithstanding subsections (g) and (h) of  
 24 section 1033, clause (i) of section 1033(a)(2)(B)  
 25 shall be applied by substituting ‘5 years’ for ‘2

1       years’ with respect to property which is compulsorily  
 2       or involuntarily converted as a result of the terrorist  
 3       attacks on September 11, 2001, in the New York  
 4       Liberty Zone but only if substantially all of the use  
 5       of the replacement property is in the City of New  
 6       York, New York.”.

7       (b) EFFECTIVE DATE.—The amendments made by  
 8       this Act shall apply to involuntary conversions occurring  
 9       on or after September 11, 2001.

10   **SEC. 660. REPEAL OF APPLICATION OF BELOW-MARKET**  
 11                   **LOAN RULES TO AMOUNTS PAID TO CERTAIN**  
 12                   **CONTINUING CARE FACILITIES.**

13       (a) IN GENERAL.—Section 7872(c)(1) (relating to  
 14       below-market loans to which section applies) is amended—

15               (1) by striking subparagraph (F), and

16               (2) by striking “(C), or (F)” in subparagraph  
 17       (E) and inserting “or (C)”.

18       (b) FULL EXCEPTION.—Section 7872(g) (relating to  
 19       exception for certain loans to qualified continuing care fa-  
 20       cilities) is amended—

21               (1) by striking “made by a lender to a qualified  
 22       continuing care facility pursuant to a continuing  
 23       care contract” in paragraph (1) and inserting “owed  
 24       by a facility which on the last day of such year is

1 a qualified continuing care facility, if such loan was  
2 made pursuant to a continuing care contract and”,

3 (2) by striking “increased personal care services  
4 or” in paragraph (3)(C),

5 (3) by adding at the end of paragraph (3) the  
6 following new flush sentence:

7 “The Secretary shall issue guidance which limits  
8 such term to contracts which provide to an indi-  
9 vidual or individual’s spouse only facilities, care, and  
10 services described in this paragraph which are cus-  
11 tomarily offered by continuing care facilities.”,

12 (4) by inserting “independent living unit” after  
13 “all of the” in paragraph (4)(A)(ii),

14 (5) by striking paragraphs (2) and (5),

15 (6) by redesignating paragraphs (3) and (4) as  
16 paragraphs (2) and (3), respectively, and

17 (7) by striking “CERTAIN” in the heading  
18 thereof.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to calendar years beginning after  
21 2004.



1 **SEC. 661. GOLD, SILVER, PLATINUM, AND PALLADIUM**  
2 **TREATED IN THE SAME MANNER AS STOCKS**  
3 **AND BONDS FOR MAXIMUM CAPITAL GAINS**  
4 **RATE FOR INDIVIDUALS.**

5 (a) IN GENERAL.—Section 1(h)(5) (relating to defi-  
6 nition of collectibles gain and loss) is amended—

7 (1) by striking “(as defined in section 408(m)  
8 without regard to paragraph (3) thereof)” in sub-  
9 paragraph (A) thereof, and

10 (2) by adding at the end the following new sub-  
11 paragraph:

12 “(C) COLLECTIBLE.—For purposes of this  
13 paragraph, the term ‘collectible’ has the mean-  
14 ing given such term by section 408(m), except  
15 that in applying paragraph (3)(B) thereof the  
16 determination of whether any bullion is ex-  
17 cluded from treatment as a collectible shall be  
18 made without regard to the person who is in  
19 physical possession of the bullion.”

20 (b) EFFECTIVE DATE.—The amendments made by  
21 subsection (a) shall apply to taxable years beginning after  
22 December 31, 2003.

1 **SEC. 662. INCLUSION OF PRIMARY AND SECONDARY MED-**  
2 **ICAL STRATEGIES FOR CHILDREN AND**  
3 **ADULTS WITH SICKLE CELL DISEASE AS MED-**  
4 **ICAL ASSISTANCE UNDER THE MEDICAID**  
5 **PROGRAM.**

6 (a) OPTIONAL MEDICAL ASSISTANCE.—

7 (1) IN GENERAL.—Section 1905 of the Social  
8 Security Act (42 U.S.C. 1396d) is amended—

9 (A) in subsection (a)—

10 (i) by striking “and” at the end of  
11 paragraph (26);

12 (ii) by redesignating paragraph (27)  
13 as paragraph (28); and

14 (iii) by inserting after paragraph (26),  
15 the following:

16 “(27) subject to subsection (x), primary and  
17 secondary medical strategies and treatment and  
18 services for individuals who have Sickle Cell Disease;  
19 and”; and

20 (B) by adding at the end the following:

21 “(x) For purposes of subsection (a)(27), the strate-  
22 gies, treatment, and services described in that subsection  
23 include the following:

24 “(1) Chronic blood transfusion (with  
25 deferoxamine chelation) to prevent stroke in individ-

1 uals with Sickle Cell Disease who have been identi-  
2 fied as being at high risk for stroke.

3 “(2) Genetic counseling and testing for individ-  
4 uals with Sickle Cell Disease or the sickle cell trait  
5 to allow health care professionals to treat such indi-  
6 viduals and to prevent symptoms of Sickle Cell Dis-  
7 ease.

8 “(3) Other treatment and services to prevent  
9 individuals who have Sickle Cell Disease and who  
10 have had a stroke from having another stroke.”.

11 (2) RULE OF CONSTRUCTION.—Nothing in sub-  
12 sections (a)(27) or (x) of section 1905 of the Social  
13 Security Act (42 U.S.C. 1396d), as added by para-  
14 graph (1), shall be construed as implying that a  
15 State medicaid program under title XIX of such Act  
16 could not have treated, prior to the date of enact-  
17 ment of this Act, any of the primary and secondary  
18 medical strategies and treatment and services de-  
19 scribed in such subsections as medical assistance  
20 under such program, including as early and periodic  
21 screening, diagnostic, and treatment services under  
22 section 1905(r) of such Act.

23 (b) FEDERAL REIMBURSEMENT FOR EDUCATION  
24 AND OTHER SERVICES RELATED TO THE PREVENTION  
25 AND TREATMENT OF SICKLE CELL DISEASE.—Section

1 1903(a)(3) of the Social Security Act (42 U.S.C.  
2 1396b(a)(3)) is amended—

3 (1) in subparagraph (D), by striking “plus” at  
4 the end and inserting “and”; and

5 (2) by adding at the end the following:

6 “(E) 50 percent of the sums expended with  
7 respect to costs incurred during such quarter as  
8 are attributable to providing—

9 “(i) services to identify and educate  
10 individuals who are likely to be eligible for  
11 medical assistance under this title and who  
12 have Sickle Cell Disease or who are car-  
13 riers of the sickle cell gene, including edu-  
14 cation regarding how to identify such indi-  
15 viduals; or

16 “(ii) education regarding the risks of  
17 stroke and other complications, as well as  
18 the prevention of stroke and other com-  
19 plications, in individuals who are likely to  
20 be eligible for medical assistance under  
21 this title and who have Sickle Cell Disease;  
22 plus”.

23 (c) DEMONSTRATION PROGRAM FOR THE DEVELOP-  
24 MENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS

1 FOR THE PREVENTION AND TREATMENT OF SICKLE  
2 CELL DISEASE.—

3 (1) AUTHORITY TO CONDUCT DEMONSTRATION  
4 PROGRAM.—

5 (A) IN GENERAL.—The Administrator,  
6 through the Bureau of Primary Health Care  
7 and the Maternal and Child Health Bureau,  
8 shall conduct a demonstration program by mak-  
9 ing grants to up to 40 eligible entities for each  
10 fiscal year in which the program is conducted  
11 under this section for the purpose of developing  
12 and establishing systemic mechanisms to im-  
13 prove the prevention and treatment of Sickle  
14 Cell Disease, including through—

15 (i) the coordination of service delivery  
16 for individuals with Sickle Cell Disease;

17 (ii) genetic counseling and testing;

18 (iii) bundling of technical services re-  
19 lated to the prevention and treatment of  
20 Sickle Cell Disease;

21 (iv) training of health professionals;

22 and

23 (v) identifying and establishing other  
24 efforts related to the expansion and coordi-  
25 nation of education, treatment, and con-

1 continuity of care programs for individuals  
2 with Sickle Cell Disease.

3 (B) GRANT AWARD REQUIREMENTS.—

4 (i) GEOGRAPHIC DIVERSITY.—The  
5 Administrator shall, to the extent prac-  
6 ticable, award grants under this section to  
7 eligible entities located in different regions  
8 of the United States.

9 (ii) PRIORITY.—In awarding grants  
10 under this subsection, the Administrator  
11 shall give priority to awarding grants to el-  
12 igible entities that are—

13 (I) Federally-qualified health cen-  
14 ters that have a partnership or other  
15 arrangement with a comprehensive  
16 Sickle Cell Disease treatment center  
17 that does not receive funds from the  
18 National Institutes of Health; or

19 (II) Federally-qualified health  
20 centers that intend to develop a part-  
21 nership or other arrangement with a  
22 comprehensive Sickle Cell Disease  
23 treatment center that does not receive  
24 funds from the National Institutes of  
25 Health.

1           (2) ADDITIONAL REQUIREMENTS.—An eligible  
2           entity awarded a grant under this subsection shall  
3           use funds made available under the grant to carry  
4           out, in addition to the activities described in para-  
5           graph (1)(A), the following activities:

6                   (A) To facilitate and coordinate the deliv-  
7                   ery of education, treatment, and continuity of  
8                   care for individuals with Sickle Cell Disease  
9                   under—

10                          (i) the entity’s collaborative agreement  
11                          with a community-based Sickle Cell Dis-  
12                          ease organization or a nonprofit entity that  
13                          works with individuals who have Sickle Cell  
14                          Disease;

15                          (ii) the Sickle Cell Disease newborn  
16                          screening program for the State in which  
17                          the entity is located; and

18                          (iii) the maternal and child health  
19                          program under title V of the Social Secu-  
20                          rity Act (42 U.S.C. 701 et seq.) for the  
21                          State in which the entity is located.

22                   (B) To train nursing and other health  
23                   staff who provide care for individuals with Sick-  
24                   le Cell Disease.

1 (C) To enter into a partnership with adult  
2 or pediatric hematologists in the region and  
3 other regional experts in Sickle Cell Disease at  
4 tertiary and academic health centers and State  
5 and county health offices.

6 (D) To identify and secure resources for  
7 ensuring reimbursement under the medicaid  
8 program, State children's health insurance pro-  
9 gram, and other health programs for the pre-  
10 vention and treatment of Sickle Cell Disease.

11 (3) NATIONAL COORDINATING CENTER.—

12 (A) ESTABLISHMENT.—The Administrator  
13 shall enter into a contract with an entity to  
14 serve as the National Coordinating Center for  
15 the demonstration program conducted under  
16 this subsection.

17 (B) ACTIVITIES DESCRIBED.—The Na-  
18 tional Coordinating Center shall—

19 (i) collect, coordinate, monitor, and  
20 distribute data, best practices, and findings  
21 regarding the activities funded under  
22 grants made to eligible entities under the  
23 demonstration program;



1 (ii) develop a model protocol for eligi-  
2 ble entities with respect to the prevention  
3 and treatment of Sickle Cell Disease;

4 (iii) develop educational materials re-  
5 garding the prevention and treatment of  
6 Sickle Cell Disease; and

7 (iv) prepare and submit to Congress a  
8 final report that includes recommendations  
9 regarding the effectiveness of the dem-  
10 onstration program conducted under this  
11 subsection and such direct outcome meas-  
12 ures as—

13 (I) the number and type of  
14 health care resources utilized (such as  
15 emergency room visits, hospital visits,  
16 length of stay, and physician visits for  
17 individuals with Sickle Cell Disease);  
18 and

19 (II) the number of individuals  
20 that were tested and subsequently re-  
21 ceived genetic counseling for the sickle  
22 cell trait.

23 (4) APPLICATION.—An eligible entity desiring a  
24 grant under this subsection shall submit an applica-  
25 tion to the Administrator at such time, in such man-

ner, and containing such information as the Administrator may require.

(5) DEFINITIONS.—In this subsection:

(A) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Health Resources and Services Administration.

(B) ELIGIBLE ENTITY.—The term “eligible entity” means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

(i) has a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

(ii) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in clause (i), or the experts described in paragraph (2)(C), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

1 (C) FEDERALLY-QUALIFIED HEALTH CEN-  
 2 TER.—The term “Federally-qualified health  
 3 center” has the meaning given that term in sec-  
 4 tion 1905(l)(2)(B) of the Social Security Act  
 5 (42 U.S.C. 1396d(l)(2)(B)).

6 (6) AUTHORIZATION OF APPROPRIATIONS.—  
 7 There is authorized to be appropriated to carry out  
 8 this subsection, \$10,000,000 for each of fiscal years  
 9 2005 through 2009.

10 (d) EFFECTIVE DATE.—The amendments made by  
 11 subsections (a) and (b) take effect on the date of enact-  
 12 ment of this Act and apply to medical assistance and serv-  
 13 ices provided under title XIX of the Social Security Act  
 14 (42 U.S.C. 1396 et seq.) on or after that date.

## 15 **Subtitle F—Revenue Provisions**

### 16 **PART I—GENERAL REVENUE PROVISIONS**

#### 17 **SEC. 661A. TREASURY REGULATIONS ON FOREIGN TAX** 18 **CREDIT.**

19 Section 901, as amended by this Act, is amended by  
 20 redesignating subsection (m) as subsection (n) and by in-  
 21 serting after subsection (l) the following new subsection:

22 “(m) REGULATIONS.—The Secretary may prescribe  
 23 regulations disallowing a credit under subsection (a) for  
 24 all or a portion of any foreign tax, or allocating a foreign  
 25 tax among 2 or more persons, in cases where the foreign

1 tax is imposed on any person in respect of income of an-  
 2 other person or in other cases involving the inappropriate  
 3 separation of the foreign tax from the related foreign in-  
 4 come.”.

5 **SEC. 662B. FREEZE OF PROVISIONS REGARDING SUSPEN-**  
 6 **SION OF INTEREST WHERE SECRETARY FAILS**  
 7 **TO CONTACT TAXPAYER.**

8 (a) IN GENERAL.—Section 6404(g) (relating to sus-  
 9 pension of interest and certain penalties where Secretary  
 10 fails to contact taxpayer) is amended by striking “1-year  
 11 period (18-month period in the case of taxable years begin-  
 12 ning before January 1, 2004)” both places it appears and  
 13 inserting “18-month period”.

14 (b) EXCEPTION FOR GROSS MISSTATEMENT.—Sec-  
 15 tion 6404(g)(2) (relating to exceptions) is amended by  
 16 striking “or” at the end of subparagraph (C), by redesign-  
 17 ating subparagraph (D) as subparagraph (E), and by in-  
 18 serting after subparagraph (C) the following new subpara-  
 19 graph:

20 “(D) any interest, penalty, addition to tax,  
 21 or additional amount with respect to any gross  
 22 misstatement; or”.

23 (c) EXCEPTION FOR LISTED AND REPORTABLE  
 24 TRANSACTIONS.—Section 6404(g)(2) (relating to excep-  
 25 tions), as amended by subsection (b), is amended by strik-

1 ing “or” at the end of subparagraph (D), by redesignating  
 2 subparagraph (E) as subparagraph (F), and by inserting  
 3 after subparagraph (D) the following new subparagraph:

4                   “(E) any interest, penalty, addition to tax,  
 5                   or additional amount with respect to any re-  
 6                   portable transaction or listed transaction (as  
 7                   defined in 6707A(c)); or”.

8           (d) EFFECTIVE DATES.—

9                   (1) IN GENERAL.—Except as provided in para-  
 10                   graph (2), the amendments made by this section  
 11                   shall apply to taxable years beginning after Decem-  
 12                   ber 31, 2003.

13                   (2) EXCEPTION FOR REPORTABLE OR LISTED  
 14                   TRANSACTIONS.—The amendments made by sub-  
 15                   section (c) shall apply with respect to interest accru-  
 16                   ing after May 5, 2004.

17                   **PART II—PENSION AND DEFERRED**  
 18                   **COMPENSATION**

19           **SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COM-**  
 20                   **PENSATION PLANS.**

21                   (a) IN GENERAL.—Subpart A of part I of subchapter  
 22                   D of chapter 1 is amended by adding at the end the fol-  
 23                   lowing new section:

1 **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED**  
2 **COMPENSATION UNDER NONQUALIFIED DE-**  
3 **FERRED COMPENSATION PLANS.**

4 “(a) RULES RELATING TO CONSTRUCTIVE RE-  
5 CEIPT.—

6 “(1) IN GENERAL.—

7 “(A) GROSS INCOME INCLUSION.—If at  
8 any time during a taxable year a nonqualified  
9 deferred compensation plan—

10 “(i) fails to meet the requirements of  
11 paragraphs (2), (3), (4), and (5), or

12 “(ii) is not operated in accordance  
13 with such requirements,

14 all compensation deferred under the plan for  
15 the taxable year and all preceding taxable years  
16 shall be includible in gross income for the tax-  
17 able year to the extent not subject to a substan-  
18 tial risk of forfeiture and not previously in-  
19 cluded in gross income.

20 “(B) INTEREST AND ADDITIONAL TAX  
21 PAYABLE WITH RESPECT TO PREVIOUSLY DE-  
22 FERRED COMPENSATION.—

23 “(i) IN GENERAL.—If compensation is  
24 required to be included in gross income  
25 under subparagraph (A) for a taxable year,  
26 the tax imposed by this chapter for the

1 taxable year of inclusion shall be increased  
2 by the sum of—

3 “(I) the amount of interest deter-  
4 mined under clause (ii), and

5 “(II) an amount equal to 10 per-  
6 cent of the compensation which is re-  
7 quired to be included in gross income.

8 “(ii) INTEREST.—For purposes of  
9 clause (i), the interest determined under  
10 this clause for any taxable year is the  
11 amount of interest at the underpayment  
12 rate on the underpayments that would have  
13 occurred had the deferred compensation  
14 been includible in gross income for the tax-  
15 able year in which first deferred or, if later,  
16 the first taxable year in which such deferred  
17 compensation is not subject to a substantial  
18 risk of forfeiture.

19 “(2) DISTRIBUTIONS.—

20 “(A) IN GENERAL.—The requirements of  
21 this paragraph are met if the plan provides that  
22 compensation deferred under the plan may not  
23 be distributed earlier than—

1 “(i) except as provided in subpara-  
2 graph (B)(i), separation from service (as  
3 determined by the Secretary),

4 “(ii) the date the participant becomes  
5 disabled (within the meaning of subpara-  
6 graph (C)),

7 “(iii) death,

8 “(iv) a specified time (or pursuant to  
9 a fixed schedule) specified under the plan  
10 as of the date of the deferral of such com-  
11 pensation,

12 “(v) to the extent provided by the  
13 Secretary, a change in the ownership or ef-  
14 fective control of the corporation, or in the  
15 ownership of a substantial portion of the  
16 assets of the corporation, or

17 “(vi) the occurrence of an unforesee-  
18 able emergency.

19 “(B) SPECIAL RULES.—

20 “(i) SEPARATION FROM SERVICE OF  
21 SPECIFIED EMPLOYEES.—In the case of  
22 specified employees, the requirement of  
23 subparagraph (A)(i) is met only if distribu-  
24 tions may not be made earlier than 6  
25 months after the date of separation from



1 service. For purposes of the preceding sen-  
2 tence, a specified employee is a key em-  
3 ployee (as defined in section 416(i)) of a  
4 corporation the stock in which is publicly  
5 traded on an established securities market  
6 or otherwise.

7 “(ii) CHANGES IN OWNERSHIP OR  
8 CONTROL.—In the case of a participant  
9 who is subject to the requirements of sec-  
10 tion 16(a) of the Securities Exchange Act  
11 of 1934, the requirement of subparagraph  
12 (A)(v) is met only if distributions may not  
13 be made earlier than 1 year after the date  
14 of the change in ownership or effective  
15 control.

16 “(iii) UNFORESEEABLE EMER-  
17 GENCY.—For purposes of subparagraph  
18 (A)(vi)—

19 “(I) IN GENERAL.—The term  
20 ‘unforeseeable emergency’ means a se-  
21 vere financial hardship to the partici-  
22 pant or beneficiary resulting from a  
23 sudden and unexpected illness or acci-  
24 dent of the participant or beneficiary,  
25 the participant’s or beneficiary’s

1 spouse, or the participant's or bene-  
2 ficiary's dependent (as defined in sec-  
3 tion 152(a)), loss of the participant's  
4 or beneficiary's property due to cas-  
5 ualty, or other similar extraordinary  
6 and unforeseeable circumstances aris-  
7 ing as a result of events beyond the  
8 control of the participant or bene-  
9 ficiary.

10 “(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subpara-  
11 graph (A)(vi) is met only if, as deter-  
12 mined under regulations of the Sec-  
13 retary, the amounts distributed with  
14 respect to an emergency do not exceed  
15 the amounts necessary to satisfy such  
16 emergency plus amounts necessary to  
17 pay taxes reasonably anticipated as a  
18 result of the distribution, after taking  
19 into account the extent to which such  
20 hardship is or may be relieved  
21 through reimbursement or compensa-  
22 tion by insurance or otherwise or by  
23 liquidation of the participant's or  
24 beneficiary's assets (to the extent the  
25

1 liquidation of such assets would not  
2 itself cause severe financial hardship).

3 “(C) DISABLED.—For purposes of sub-  
4 paragraph (A)(ii), a participant shall be consid-  
5 ered disabled if the participant—

6 “(i) is unable to engage in any sub-  
7 stantial gainful activity by reason of any  
8 medically determinable physical or mental  
9 impairment which can be expected to result  
10 in death or can be expected to last for a  
11 continuous period of not less than 12  
12 months, or

13 “(ii) is, by reason of any medically de-  
14 terminable physical or mental impairment  
15 which can be expected to result in death or  
16 can be expected to last for a continuous  
17 period of not less than 12 months, receiv-  
18 ing income replacement benefits for a pe-  
19 riod of not less than 3 months under an  
20 accident and health plan covering employ-  
21 ees of the participant’s employer.

22 “(3) INVESTMENT OPTIONS.—The requirements  
23 of this paragraph are met if the plan provides that  
24 the investment options a participant may elect under  
25 the plan—

1           “(A) are comparable to the investment op-  
 2           tions which a participant may elect under the  
 3           defined contribution plan of the employer  
 4           which—

5                   “(i) meets the requirement of section  
 6                   401(a) and includes a trust exempt from  
 7                   taxation under section 501(a), and

8                   “(ii) has the fewest investment op-  
 9                   tions, or

10           “(B) if there is no such defined contribu-  
 11           tion plan, meet such requirements as the Sec-  
 12           retary may prescribe (including requirements  
 13           limiting such options to permissible investment  
 14           options specified by the Secretary).

15           “(4) ACCELERATION OF BENEFITS.—The re-  
 16           quirements of this paragraph are met if the plan  
 17           does not permit the acceleration of the time or  
 18           schedule of any payment under the plan, except as  
 19           provided by the Secretary in regulations.

20           “(5) ELECTIONS.—

21                   “(A) IN GENERAL.—The requirements of  
 22                   this paragraph are met if the requirements of  
 23                   subparagraphs (B) and (C) are met.

24                   “(B) INITIAL DEFERRAL DECISION.—The  
 25                   requirements of this subparagraph are met if

1 the plan provides that compensation for services  
2 performed during a taxable year may be de-  
3 ferred at the participant's election only if the  
4 election to defer such compensation is made  
5 during the preceding taxable year or at such  
6 other time as provided in regulations. In the  
7 case of the first year in which a participant be-  
8 comes eligible to participate in the plan, such  
9 election may be made with respect to services to  
10 be performed subsequent to the election within  
11 30 days after the date the participant becomes  
12 eligible to participate in such plan.

13 “(C) CHANGES IN TIME AND FORM OF DIS-  
14 TRIBUTION.—The requirements of this subpara-  
15 graph are met if, in the case of a plan which  
16 permits under a subsequent election a delay in  
17 a payment or a change in the form of pay-  
18 ment—

19 “(i) the plan requires that such elec-  
20 tion may not take effect until at least 12  
21 months after the date on which the elec-  
22 tion is made,

23 “(ii) in the case an election related to  
24 a payment not described in clause (ii), (iii),  
25 or (vi) of paragraph (2)(A), the plan re-

1           quires that the first payment with respect  
2           to which such election is made be deferred  
3           for a period of not less than 5 years from  
4           the date such payment would otherwise  
5           have been made, and

6           “(iii) the plan requires that any elec-  
7           tion related to a payment described in  
8           paragraph (2)(A)(iv) may not be made less  
9           than 12 months prior to the date of the  
10          first scheduled payment under such para-  
11          graph.

12          A plan shall be treated as failing to meet the  
13          requirements of this subparagraph if the plan  
14          permits more than 1 subsequent election to  
15          delay any payment.

16          “(b) RULES RELATING TO FUNDING.—

17          “(1) OFFSHORE PROPERTY IN A TRUST.—In  
18          the case of assets set aside (directly or indirectly) in  
19          a trust (or other arrangement determined by the  
20          Secretary) for purposes of paying deferred com-  
21          pensation under a nonqualified deferred compensa-  
22          tion plan, such assets shall be treated for purposes  
23          of section 83 as property transferred in connection  
24          with the performance of services whether or not such

1 assets are available to satisfy claims of general  
2 creditors—

3 “(A) at the time set aside if such assets  
4 are located outside of the United States, or

5 “(B) at the time transferred if such assets  
6 are subsequently transferred outside of the  
7 United States.

8 This paragraph shall not apply to assets located in  
9 a foreign jurisdiction if substantially all of the serv-  
10 ices to which the nonqualified deferred compensation  
11 relates are performed in such jurisdiction.

12 “(2) EMPLOYER’S FINANCIAL HEALTH.—In the  
13 case of a nonqualified deferred compensation plan,  
14 there is a transfer of property within the meaning  
15 of section 83 as of the earlier of—

16 “(A) the date on which the plan first pro-  
17 vides that assets will become restricted to the  
18 provision of benefits under the plan in connec-  
19 tion with a change in the employer’s financial  
20 health, or

21 “(B) the date on which assets are so re-  
22 stricted.

23 “(3) INCOME INCLUSION FOR OFFSHORE  
24 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For  
25 each taxable year that assets treated as transferred

1 under this subsection remain set aside in a trust or  
2 other arrangement subject to paragraph (1) or (2),  
3 any increase in value in, or earnings with respect to,  
4 such assets shall be treated as an additional transfer  
5 of property under this subsection (to the extent not  
6 previously included in income).

7 “(4) INTEREST ON TAX LIABILITY PAYABLE  
8 WITH RESPECT TO TRANSFERRED PROPERTY.—

9 “(A) IN GENERAL.—If amounts are re-  
10 quired to be included in gross income by reason  
11 of paragraph (1) or (2) for a taxable year, the  
12 tax imposed by this chapter for such taxable  
13 year shall be increased by the sum of—

14 “(i) the amount of interest determined  
15 under subparagraph (B), and

16 “(ii) an amount equal to 10 percent of  
17 the amounts required to be included in  
18 gross income.

19 “(B) INTEREST.—For purposes of sub-  
20 paragraph (A), the interest determined under  
21 this subparagraph for any taxable year is the  
22 amount of interest at the underpayment rate on  
23 the underpayments that would have occurred  
24 had the amounts so required to be included in  
25 gross income by paragraph (1) or (2) been in-



1           cludible in gross income for the taxable year in  
 2           which first deferred or, if later, the first taxable  
 3           year in which such amounts are not subject to  
 4           a substantial risk of forfeiture.

5           “(c) NO INFERENCE ON EARLIER INCOME INCLU-  
 6           SION.—Nothing in this section shall be construed to pre-  
 7           vent the inclusion of amounts in gross income under any  
 8           other provision of this chapter or any other rule of law  
 9           earlier than the time provided in this section. Any amount  
 10          included in gross income under this section shall not be  
 11          required to be included in gross income under any other  
 12          provision of this chapter or any other rule of law later  
 13          than the time provided in this section.

14          “(d) OTHER DEFINITIONS AND SPECIAL RULES.—  
 15          For purposes of this section—

16               “(1) NONQUALIFIED DEFERRED COMPENSA-  
 17               TION PLAN.—The term ‘nonqualified deferred com-  
 18               pensation plan’ means any plan that provides for the  
 19               deferral of compensation, other than—

20                       “(A) a qualified employer plan, and

21                       “(B) any bona fide vacation leave, sick  
 22               leave, compensatory time, disability pay, or  
 23               death benefit plan.

24               “(2) QUALIFIED EMPLOYER PLAN.—The term  
 25               ‘qualified employer plan’ means—

1           “(A) any plan, contract, pension, account,  
2           or trust described in subparagraph (A) or (B)  
3           of section 219(g)(5), and

4           “(B) any eligible deferred compensation  
5           plan (within the meaning of section 457(b)) of  
6           an employer described in section 457(e)(1)(A).

7           “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—  
8           The term ‘plan’ includes any agreement or arrange-  
9           ment, including an agreement or arrangement that  
10          includes one person.

11          “(4) SUBSTANTIAL RISK OF FORFEITURE.—The  
12          rights of a person to compensation are subject to a  
13          substantial risk of forfeiture if such person’s rights  
14          to such compensation are conditioned upon the fu-  
15          ture performance of substantial services by any indi-  
16          vidual.

17          “(5) TREATMENT OF EARNINGS.—References to  
18          deferred compensation shall be treated as including  
19          references to income (whether actual or notional) at-  
20          tributable to such compensation or such income.

21          “(6) EXCEPTION FOR NONELECTIVE DEFERRED  
22          COMPENSATION.—This section shall not apply to any  
23          nonelective deferred compensation to which section  
24          457 does not apply by reason of section 457(e)(12),  
25          but only if such compensation is provided under a

1 nonqualified deferred compensation plan which was  
2 in existence on May 1, 2004, and which was pro-  
3 viding nonelective deferred compensation described  
4 in section 457(e)(12) on such date. If, after May 1,  
5 2004, a plan described in the preceding sentence  
6 adopts a plan amendment which provides a material  
7 change in the classes of individuals eligible to par-  
8 ticipate in the plan, this paragraph shall not apply  
9 to any nonelective deferred compensation provided  
10 under the plan on or after the date of the adoption  
11 of the amendment.

12 “(e) REGULATIONS.—The Secretary shall prescribe  
13 such regulations as may be necessary or appropriate to  
14 carry out the purposes of this section, including regula-  
15 tions—

16 “(1) providing for the determination of  
17 amounts of deferral in the case of a nonqualified de-  
18 ferred compensation plan which is a defined benefit  
19 plan,

20 “(2) relating to changes in the ownership and  
21 control of a corporation or assets of a corporation  
22 for purposes of subsection (a)(2)(A)(v),

23 “(3) exempting arrangements from the applica-  
24 tion of subsection (b) if such arrangements will not  
25 result in an improper deferral of United States tax

1 and will not result in assets being effectively beyond  
 2 the reach of creditors,

3 “(4) defining financial health for purposes of  
 4 subsection (b)(2), and

5 “(5) disregarding a substantial risk of for-  
 6 feiture in cases where necessary to carry out the  
 7 purposes of this section.”.

8 (b) APPLICATION OF GOLDEN PARACHUTE PAYMENT  
 9 PROVISIONS.—Section 280G of such Code (relating to  
 10 golden parachute payments) is amended by redesignating  
 11 subsection (e) as subsection (f) and by inserting after sub-  
 12 section (d) the following new subsection:

13 “(e) SPECIAL RULES FOR CERTAIN PAYMENTS FROM  
 14 NONQUALIFIED DEFERRED COMPENSATION PLANS.—

15 “(1) IN GENERAL.—Notwithstanding any other  
 16 provision of this section, an applicable payment shall  
 17 be treated as an excess parachute payment for pur-  
 18 poses of this section and section 4999.

19 “(2) COORDINATION WITH OTHER PAY-  
 20 MENTS.—

21 “(A) APPLICABLE PAYMENTS WHICH ARE  
 22 PARACHUTE PAYMENTS.—If any applicable pay-  
 23 ment is a parachute payment (determined with-  
 24 out regard to subsection (b)(2)(A)(ii))—

1 “(i) except as provided in paragraph  
2 (4), this section shall be applied to such  
3 payment in the same manner as if this  
4 subsection had not been enacted, and

5 “(ii) if such application results in an  
6 excess parachute payment, any tax under  
7 section 4999 on the excess parachute pay-  
8 ment shall be in addition to the tax im-  
9 posed by reason of paragraph (1).

10 “(B) APPLICABLE PAYMENTS WHICH ARE  
11 NOT PARACHUTE PAYMENTS.—An applicable  
12 payment not described in subparagraph (A)  
13 shall be taken into account in determining  
14 whether any payment described in subpara-  
15 graph (A) or any payment which is not an ap-  
16 plicable payment is a parachute payment under  
17 subsection (b)(2).

18 “(3) APPLICABLE PAYMENT.—For purposes of  
19 this subsection, the term ‘applicable payment’ means  
20 any distribution (including any distribution treated  
21 as a parachute payment without regard to this sub-  
22 section) from a nonqualified deferred compensation  
23 plan (as defined in section 409A(d)) which is  
24 made—

1           “(A) to a participant who is subject to the  
2           requirements of section 16(a) of the Securities  
3           Exchange Act of 1934, and

4           “(B) during the 1-year period following a  
5           change in the ownership or effective control of  
6           the corporation or in the ownership of a sub-  
7           stantial portion of the assets of the corporation.

8           Such terms shall not include any distribution by rea-  
9           son of the death of the participant or the participant  
10          becoming disabled (within the meaning of section  
11          409A(a)(2)(C)).

12          “(4) NO DOUBLE COUNTING.—Under regula-  
13          tions, proper adjustments shall be made in the appli-  
14          cation of this subsection to prevent a deduction from  
15          being disallowed more than once.”.

16          (c) W-2 FORMS.—

17               (1) IN GENERAL.—Subsection (a) of section  
18               6051 (relating to receipts for employees) is amended  
19               by striking “and” at the end of paragraph (11), by  
20               striking the period at the end of paragraph (12) and  
21               inserting “, and”, and by inserting after paragraph  
22               (12) the following new paragraph:

23               “(13) the total amount of deferrals under a  
24               nonqualified deferred compensation plan (within the  
25               meaning of section 409A(d)).”.

1           (2) THRESHOLD.—Subsection (a) of section  
 2       6051 is amended by adding at the end the following:  
 3       “In the case of the amounts required to be shown  
 4       by paragraph (13), the Secretary may (by regula-  
 5       tion) establish a minimum amount of deferrals below  
 6       which paragraph (13) does not apply.”.

7       (d) CONFORMING AND CLERICAL AMENDMENTS.—

8           (1) Section 414(b) is amended by inserting  
 9       “409A,” after “408(p),”.

10          (2) Section 414(c) is amended by inserting  
 11       “409A,” after “408(p),”.

12          (3) The table of sections for such subpart A is  
 13       amended by adding at the end the following new  
 14       item:

“Sec. 409A. Inclusion in gross income of deferred compensation  
 under nonqualified deferred compensation plans.”.

15       (e) EFFECTIVE DATE.—

16          (1) IN GENERAL.—The amendments made by  
 17       this section shall apply to amounts deferred in tax-  
 18       able years beginning after December 31, 2004.

19          (2) EARNINGS ATTRIBUTABLE TO AMOUNT PRE-  
 20       VIOUSLY DEFERRED.—The amendments made by  
 21       this section shall apply to earnings on deferred com-  
 22       pensation only to the extent that such amendments  
 23       apply to such compensation.

1       (f) GUIDANCE RELATING TO CHANGE OF OWNER-  
2 SHIP OR CONTROL.—Not later than 90 days after the date  
3 of the enactment of this Act, the Secretary of the Treasury  
4 shall issue guidance on what constitutes a change in own-  
5 ership or effective control for purposes of section 409A  
6 of the Internal Revenue Code of 1986, as added by this  
7 section.

8       (g) GUIDANCE RELATING TO TERMINATION OF CER-  
9 TAIN EXISTING ARRANGEMENTS.—Not later than 90 days  
10 after the date of the enactment of this Act, the Secretary  
11 of the Treasury shall issue guidance providing a limited  
12 period during which an individual participating in a non-  
13 qualified deferred compensation plan adopted on or before  
14 December 31, 2004, may, without violating the require-  
15 ments of paragraphs (2), (3), (4), and (5) of section  
16 409A(a) of the Internal Revenue Code of 1986 (as added  
17 by this section), terminate participation or cancel an out-  
18 standing deferral election with regard to amounts earned  
19 after December 31, 2004, if such amounts are includible  
20 in income as earned.



1 **SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE**  
 2 **EXERCISE OF STOCK OPTIONS AND RE-**  
 3 **STRICTED STOCK GAINS THROUGH DE-**  
 4 **FERRED COMPENSATION ARRANGEMENTS.**

5 (a) IN GENERAL.—Section 83 (relating to property  
 6 transferred in connection with performance of services) is  
 7 amending by adding at the end the following new sub-  
 8 section:

9 “(i) PROHIBITION ON ADDITIONAL DEFERRAL  
 10 THROUGH DEFERRED COMPENSATION ARRANGE-  
 11 MENTS.—If a taxpayer exchanges—

12 “(1) an option to purchase employer securi-  
 13 ties—

14 “(A) to which subsection (a) applies, or

15 “(B) which is described in subsection  
 16 (e)(3), or

17 “(2) employer securities or any other property  
 18 based on employer securities transferred to the tax-  
 19 payer,

20 for a right to receive future payments, then, notwith-  
 21 standing any other provision of this title, there shall be  
 22 included in gross income for the taxable year of the ex-  
 23 change an amount equal to the present value of such right  
 24 (or such other amount as the Secretary may by regulations  
 25 specify). For purposes of this subsection, the term ‘em-

1 ployer securities' includes any security issued by the em-  
 2 ployer.'".

3 (b) CONTROLLED GROUP RULES.—Section 414(t)(2)  
 4 is amended by inserting “83(i),” after “79,”.

5 (c) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to any exchange after December  
 7 31, 2004.

8 **SEC. 673. INCREASE IN WITHHOLDING FROM SUPPLE-**  
 9 **MENTAL WAGE PAYMENTS IN EXCESS OF**  
 10 **\$1,000,000.**

11 (a) IN GENERAL.—If an employer elects under  
 12 Treasury Regulation 31.3402(g)–1 to determine the  
 13 amount to be deducted and withheld from any supple-  
 14 mental wage payment by using a flat percentage rate, the  
 15 rate to be used in determining the amount to be so de-  
 16 ducted and withheld shall not be less than 28 percent (or  
 17 the corresponding rate in effect under section 1(i)(2) of  
 18 the Internal Revenue Code of 1986 for taxable years be-  
 19 ginning in the calendar year in which the payment is  
 20 made).

21 (b) SPECIAL RULE FOR LARGE PAYMENTS.—

22 (1) IN GENERAL.—Notwithstanding subsection  
 23 (a), if the supplemental wage payment, when added  
 24 to all such payments previously made by the em-  
 25 ployer to the employee during the calendar year, ex-

ceeds \$1,000,000, the rate used with respect to such excess shall be equal to the maximum rate of tax in effect under section 1 of such Code for taxable years beginning in such calendar year.

(2) AGGREGATION.—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subsection.

(c) CONFORMING AMENDMENT.—Section 13273 of the Revenue Reconciliation Act of 1993 (Public Law 103–66) is repealed.

(d) EFFECTIVE DATE.—The provisions of, and the amendment made by, this section shall apply to payments made after December 31, 2003.

**SEC. 674. TREATMENT OF SALE OF STOCK ACQUIRED PURSUANT TO EXERCISE OF STOCK OPTIONS TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.**

(a) IN GENERAL.—Section 421 of the Internal Revenue Code of 1986 (relating to general rules for certain stock options) is amended by adding at the end the following new subsection:

“(d) CERTAIN SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.—If—

1           “(1) a share of stock is transferred to an eligi-  
 2           ble person (as defined in section 1043(b)(1)) pursu-  
 3           ant to such person’s exercise of an option to which  
 4           this part applies, and

5           “(2) such share is disposed of by such person  
 6           pursuant to a certificate of divestiture (as defined in  
 7           section 1043(b)(2)),  
 8           such disposition shall be treated as meeting the require-  
 9           ments of section 422(a)(1) or 423(a)(1), whichever is ap-  
 10          plicable.”

11          (b) EFFECTIVE DATE.—The amendment made by  
 12          this section shall apply to sales after the date of the enact-  
 13          ment of this Act.

14       **SEC. 675. APPLICATION OF BASIS RULES TO EMPLOYER**  
 15                               **AND EMPLOYEE CONTRIBUTIONS ON BEHALF**  
 16                               **OF NONRESIDENT ALIENS.**

17          (a) IN GENERAL.—Section 72 (relating to annuities  
 18          and certain proceeds of endowment and life insurance con-  
 19          tracts) is amended by redesignating subsection (w) as sub-  
 20          section (x) and by inserting after subsection (v) the fol-  
 21          lowing new subsection:

22               “(w) APPLICATION OF BASIS RULES TO EMPLOYER  
 23          AND EMPLOYEE CONTRIBUTIONS MADE ON BEHALF OF  
 24          NONRESIDENT ALIENS.—

1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of this section, for purposes of determining  
3           the portion of any distribution which is includible in  
4           gross income of a distributee who is a citizen or resi-  
5           dent of the United States, the investment in the con-  
6           tract shall not include any applicable nontaxable  
7           contributions.

8           “(2) APPLICABLE NONTAXABLE CONTRIBU-  
9           TION.—For purposes of this subsection, the term  
10          ‘applicable nontaxable contribution’ means any em-  
11          ployer or employee contribution—

12               “(A) which was made with respect to com-  
13               pensation for labor or personal services by an  
14               employee who, at the time the services were  
15               performed, was a nonresident alien for purposes  
16               of the laws of the United States in effect at  
17               such time, but only if such compensation is  
18               treated as from sources without the United  
19               States, and

20               “(B) which was not subject to income tax  
21               under the laws of the United States or any for-  
22               eign country.

23           “(3) REGULATIONS.—The Secretary shall pre-  
24           scribe such regulations as may be necessary to carry  
25           out the provisions of this subsection, including regu-

1       lations treating contributions as not subject to tax  
 2       under the laws of any foreign country where appro-  
 3       priate to carry out the purposes of this subsection.”.

4       (b) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to distributions on or after the date  
 6 of the enactment of this Act.

7       **TITLE VII—EXTENSIONS OF**  
 8       **CERTAIN EXPIRING PROVISIONS**  
 9       **Subtitle A—Extensions**

10       **SEC. 701. PARITY IN THE APPLICATION OF CERTAIN LIMITS**  
 11       **TO MENTAL HEALTH BENEFITS.**

12       (a) IN GENERAL.—Section 9812(f) is amended—

13               (1) by striking “and” at the end of paragraph  
 14       (1), and

15               (2) by striking paragraph (2) and inserting the  
 16       following new paragraphs:

17               “(2) on or after January 1, 2004, and before  
 18       the date of the enactment of the Jumpstart Our  
 19       Business Strength (JOBS) Act, and

20               “(3) after December 31, 2005.”.

21       (b) ERISA.—Section 712(f) of the Employee Retire-  
 22       ment Income Security Act of 1974 (29 U.S.C. 1185a(f))  
 23       is amended by striking “on or after December 31, 2004”  
 24       and inserting “after December 31, 2005”.

1 (c) PHSA.—Section 2705(f) of the Public Health  
 2 Service Act (42 U.S.C. 300gg-5(f)) is amended by striking  
 3 “on or after December 31, 2004” and inserting “after De-  
 4 cember 31, 2005”.

5 (d) EFFECTIVE DATES.—

6 (1) SUBSECTION (a).—The amendments made  
 7 by subsection (a) shall apply to benefits for services  
 8 furnished on or after December 31, 2003.

9 (2) SUBSECTIONS (b) AND (c).—The amend-  
 10 ments made by subsections (b) and (c) shall apply  
 11 to benefits for services furnished on or after Decem-  
 12 ber 31, 2004.

13 **SEC. 702. MODIFICATIONS TO WORK OPPORTUNITY CREDIT**  
 14 **AND WELFARE-TO-WORK CREDIT.**

15 (a) PERMANENT EXTENSION OF CREDIT.—

16 (1) IN GENERAL.—Section 51(c) is amended by  
 17 striking paragraph (4).

18 (2) LONG-TERM FAMILY ASSISTANCE RECIPI-  
 19 ENTS.—

20 (A) IN GENERAL.—Section 51A is amend-  
 21 ed by striking subsection (f).

22 (B) CONFORMING AMENDMENTS.—

23 (i) The heading for section 51A is  
 24 amended by striking “**TEMPORARY**”.

1                   (ii) The item relating to section 51A  
2                   in the table of sections for subpart F of  
3                   part IV of subchapter A of chapter 1 is  
4                   amended by striking “Temporary incen-  
5                   tives” and inserting “Incentives”.

6           (b) ELIGIBILITY OF EX-FELONS DETERMINED  
7 WITHOUT REGARD TO FAMILY INCOME.—Paragraph (4)  
8 of section 51(d) is amended by adding “and” at the end  
9 of subparagraph (A), by striking “, and” at the end of  
10 subparagraph (B) and inserting a period, and by striking  
11 all that follows subparagraph (B).

12          (c) INCREASE IN MAXIMUM AGE FOR ELIGIBILITY OF  
13 FOOD STAMP RECIPIENTS.—Clause (i) of section  
14 51(d)(8)(A) is amended by striking “25” and inserting  
15 “40”.

16          (d) INCREASE IN MAXIMUM AGE FOR DESIGNATED  
17 COMMUNITY RESIDENTS.—

18               (1) IN GENERAL.—Paragraph (5) of section  
19 51(d) is amended to read as follows:

20               “(5) DESIGNATED COMMUNITY RESIDENTS.—

21                       “(A) IN GENERAL.—The term ‘designated  
22                       community resident’ means any individual who  
23                       is certified by the designated local agency—

24                               “(i) as having attained age 18 but not  
25                               age 40 on the hiring date, and



1                   “(ii) as having his principal place of  
2                   abode within an empowerment zone, enter-  
3                   prise community, or renewal community.

4                   “(B) INDIVIDUAL MUST CONTINUE TO RE-  
5                   SIDE IN ZONE OR COMMUNITY.—In the case of  
6                   a designated community resident, the term  
7                   ‘qualified wages’ shall not include wages paid or  
8                   incurred for services performed while the indi-  
9                   vidual’s principal place of abode is outside an  
10                  empowerment zone, enterprise community, or  
11                  renewal community.”

12                  (2) CONFORMING AMENDMENT.—Subparagraph  
13                  (D) of section 51(d)(1) is amended to read as fol-  
14                  lows:

15                         “(D) a designated community resident,”.

16                  (e) EFFECTIVE DATES.—

17                         (1) EXTENSION OF CREDITS.—The amend-  
18                         ments made by subsection (a) shall apply to individ-  
19                         uals who begin work for the employer after Decem-  
20                         ber 31, 2003.

21                         (2) MODIFICATIONS.—The amendments made  
22                         by subsections (b), (c), and (d) shall apply to indi-  
23                         viduals who begin work for the employer after De-  
24                         cember 31, 2004.

1 **SEC. 703. CONSOLIDATION OF WORK OPPORTUNITY CRED-**  
2 **IT WITH WELFARE-TO-WORK CREDIT.**

3 (a) IN GENERAL.—Paragraph (1) of section 51(d) is  
4 amended by striking “or” at the end of subparagraph (G),  
5 by striking the period at the end of subparagraph (H) and  
6 inserting “, or”, and by adding at the end the following  
7 new subparagraph:

8 “(I) a long-term family assistance recipi-  
9 ent.”

10 (b) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—  
11 Subsection (d) of section 51 is amended by redesignating  
12 paragraphs (10) through (12) as paragraphs (11) through  
13 (13), respectively, and by inserting after paragraph (9) the  
14 following new paragraph:

15 “(10) LONG-TERM FAMILY ASSISTANCE RECIPI-  
16 ENT.—The term ‘long-term family assistance recipi-  
17 ent’ means any individual who is certified by the  
18 designated local agency—

19 “(A) as being a member of a family receiv-  
20 ing assistance under a IV-A program (as de-  
21 fined in paragraph (2)(B)) for at least the 18-  
22 month period ending on the hiring date,

23 “(B)(i) as being a member of a family re-  
24 ceiving such assistance for 18 months beginning  
25 after August 5, 1997, and

1           “(ii) as having a hiring date which is not  
 2           more than 2 years after the end of the earliest  
 3           such 18-month period, or

4           “(C)(i) as being a member of a family  
 5           which ceased to be eligible for such assistance  
 6           by reason of any limitation imposed by Federal  
 7           or State law on the maximum period such as-  
 8           sistance is payable to a family, and

9           “(ii) as having a hiring date which is not  
 10          more than 2 years after the date of such ces-  
 11          sation.”

12          (c) INCREASED CREDIT FOR EMPLOYMENT OF LONG-  
 13          TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is  
 14          amended by inserting after subsection (d) the following  
 15          new subsection:

16          “(e) CREDIT FOR EMPLOYMENT OF LONG-TERM  
 17          FAMILY ASSISTANCE RECIPIENTS.—

18                 “(1) IN GENERAL.—With respect to the em-  
 19          ployment of a long-term family assistance recipi-  
 20          ent—

21                 “(A) the amount of the work opportunity  
 22          credit determined under this section for the tax-  
 23          able year shall include 50 percent of the quali-  
 24          fied second-year wages for such year, and

1           “(B) in lieu of applying subsection (b)(3),  
 2           the amount of the qualified first-year wages,  
 3           and the amount of qualified second-year wages,  
 4           which may be taken into account with respect  
 5           to such a recipient shall not exceed \$10,000 per  
 6           year.

7           “(2) QUALIFIED SECOND-YEAR WAGES.—For  
 8           purposes of this subsection, the term ‘qualified sec-  
 9           ond-year wages’ means qualified wages—

10           “(A) which are paid to a long-term family  
 11           assistance recipient, and

12           “(B) which are attributable to service ren-  
 13           dered during the 1-year period beginning on the  
 14           day after the last day of the 1-year period with  
 15           respect to such recipient determined under sub-  
 16           section (b)(2).

17           “(3) SPECIAL RULES FOR AGRICULTURAL AND  
 18           RAILWAY LABOR.—If such recipient is an employee  
 19           to whom subparagraph (A) or (B) of subsection  
 20           (h)(1) applies, rules similar to the rules of such sub-  
 21           paragraphs shall apply except that—

22           “(A) such subparagraph (A) shall be ap-  
 23           plied by substituting ‘\$10,000’ for ‘\$6,000’, and

24           “(B) such subparagraph (B) shall be ap-  
 25           plied by substituting ‘\$833.33’ for ‘\$500’.”

1 (d) REPEAL OF SEPARATE WELFARE-TO-WORK  
2 CREDIT.—

3 (1) IN GENERAL.—Section 51A is hereby re-  
4 pealed.

5 (2) CLERICAL AMENDMENT.—The table of sec-  
6 tions for subpart F of part IV of subchapter A of  
7 chapter 1 is amended by striking the item relating  
8 to section 51A.

9 (e) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to individuals who begin work for  
11 the employer after December 31, 2004.

12 **SEC. 704. QUALIFIED ZONE ACADEMY BONDS.**

13 (a) IN GENERAL.—Paragraph (1) of section  
14 1397E(e) is amended by striking “and 2003” and insert-  
15 ing “2003, 2004, and 2005”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 subsection (a) shall apply to obligations issued after De-  
18 cember 31, 2003.

19 **SEC. 705. COVER OVER OF TAX ON DISTILLED SPIRITS.**

20 (a) IN GENERAL.—Paragraph (1) of section 7652(f)  
21 is amended by striking “January 1, 2004” and inserting  
22 “January 1, 2006”.

23 (b) EFFECTIVE DATE.—The amendment made by  
24 subsection (a) shall apply to articles brought into the  
25 United States after December 31, 2003.

1 **SEC. 706. DEDUCTION FOR CORPORATE DONATIONS OF**  
2 **SCIENTIFIC PROPERTY AND COMPUTER**  
3 **TECHNOLOGY.**

4 (a) SCIENTIFIC PROPERTY USED FOR RESEARCH.—

5 (1) IN GENERAL.—Clause (ii) of section  
6 170(e)(4)(B) (defining qualified research contribu-  
7 tions) is amended by inserting “or assembled” after  
8 “constructed”.

9 (2) CONFORMING AMENDMENT.—Clause (iii) of  
10 section 170(e)(4)(B) is amended by inserting “or as-  
11 sembling” after “construction”.

12 (b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR  
13 EDUCATIONAL PURPOSES.—

14 (1) IN GENERAL.—Clause (ii) of section  
15 170(e)(6)(B) is amended by inserting “or assem-  
16 bled” after “constructed” and “or assembling” after  
17 “construction”.

18 (2) SPECIAL RULE EXTENDED.—Section  
19 170(e)(6)(G) is amended by striking “2003” and in-  
20 serting “2005”.

21 (3) CONFORMING AMENDMENTS.—Subpara-  
22 graph (D) of section 170(e)(6) is amended by insert-  
23 ing “or assembled” after “constructed” and “or as-  
24 sembling” after “construction”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to contributions made in taxable  
3 years beginning after December 31, 2003.

4 **SEC. 707. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL**  
5 **TEACHERS.**

6 (a) IN GENERAL.—Subparagraph (D) of section  
7 62(a)(2) is amended by striking “or 2003” and inserting  
8 “, 2003, 2004, or 2005”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 subsection (a) shall apply to expenses paid or incurred in  
11 taxable years beginning after December 31, 2003.

12 **SEC. 708. EXPENSING OF ENVIRONMENTAL REMEDIATION**  
13 **COSTS.**

14 (a) EXTENSION OF TERMINATION DATE.—Sub-  
15 section (h) of section 198 is amended by striking “Decem-  
16 ber 31, 2003” and inserting “December 31, 2005”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall apply to expenditures paid or incurred  
19 after December 31, 2003.

20 **SEC. 709. EXPANSION OF CERTAIN NEW YORK LIBERTY**  
21 **ZONE BENEFITS.**

22 (a) EXTENSION OF TAX-EXEMPT BOND FINANC-  
23 ING.—Subparagraph (D) of section 1400L(d)(2) is  
24 amended by striking “2005” and inserting “2006”.

1 (b) CLARIFICATION OF BONDS ELIGIBLE FOR AD-  
 2 VANCE REFUNDING.—Section 1400L(e)(2)(B) (relating to  
 3 bonds described) is amended by striking “, or” and insert-  
 4 ing “or the Municipal Assistance Corporation, or”.

5 (c) ELECTION OUT TECHNICAL AMENDMENT.—Sub-  
 6 section (c) of section 1400L is amended by adding at the  
 7 end the following new paragraph:

8 “(5) ELECTION OUT.—For purposes of this  
 9 subsection, rules similar to the rules of section  
 10 168(k)(2)(C)(iii) shall apply.”.

11 (d) EFFECTIVE DATE.—The amendments made by  
 12 subsections (b) and (c) shall take effect as if included in  
 13 the amendments made by section 301 of the Job Creation  
 14 and Worker Assistance Act of 2002.

15 **SEC. 710. REPEAL OF REDUCTION OF DEDUCTIONS FOR**  
 16 **MUTUAL LIFE INSURANCE COMPANIES.**

17 (a) IN GENERAL.—Section 809 of the Internal Rev-  
 18 enue Code of 1986 (relating to reductions in certain de-  
 19 duction of mutual life insurance companies) is hereby re-  
 20 pealed.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Subsections (a)(2)(B) and (b)(1)(B) of sec-  
 23 tion 807 of such Code are each amended by striking  
 24 “the sum of (i)” and by striking “plus (ii) any ex-



1       cess described in section 809(a)(2) for the taxable  
2       year,”.

3           (2)(A) The last sentence of section 807(d)(1) of  
4       such Code is amended by striking “section  
5       809(b)(4)(B)” and inserting “paragraph (6)”.

6           (B) Subsection (d) of section 807 of such Code  
7       is amended by adding at the end the following new  
8       paragraph:

9           “(6) STATUTORY RESERVES.—The term ‘statu-  
10       tory reserves’ means the aggregate amount set forth  
11       in the annual statement with respect to items de-  
12       scribed in section 807(c). Such term shall not in-  
13       clude any reserve attributable to a deferred and un-  
14       collected premium if the establishment of such re-  
15       serve is not permitted under section 811(c).”

16          (3) Subsection (c) of section 808 of such Code  
17       is amended to read as follows:

18          “(c) AMOUNT OF DEDUCTION.—The deduction for  
19       policyholder dividends for any taxable year shall be an  
20       amount equal to the policyholder dividends paid or accrued  
21       during the taxable year.”

22          (4) Subparagraph (A) of section 812(b)(3) of  
23       such Code is amended by striking “sections 808 and  
24       809” and inserting “section 808”.

1 (5) Subsection (c) of section 817 of such Code  
2 is amended by striking “(other than section 809)”.

(6) Subsection (c) of section 842 of such Code is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(7) The table of sections for subpart C of part I of subchapter L of chapter 1 of such Code is amended by striking the item relating to section 809.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

13 SEC. 711. TAX INCENTIVES FOR INVESTMENT IN THE DIS-  
14 TRICT OF COLUMBIA.

(a) DESIGNATION OF ZONE.—Subsection (f) of section 1400 is amended by striking “December 31, 2003” both places it appears and inserting “December 31, 2005”.

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT  
BONDS.—Subsection (b) of section 1400A is amended by  
striking “December 31, 2003” and inserting “December  
31, 2005”.

23 (c) ZERO PERCENT CAPITAL GAINS RATE.—

24 (1) IN GENERAL.—Subsection (b) of section  
25 1400B is amended by striking “January 1, 2004”

1 each place it appears and inserting “January 1,  
2 2006”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) Section 1400B(e)(2) is amended—

5 (i) by striking “December 31, 2008”  
6 and inserting “December 31, 2010”, and

7 (ii) by striking “2008” in the heading  
8 and inserting “2010”.

9 (B) Section 1400B(g)(2) is amended by  
10 striking “December 31, 2008” and inserting  
11 “December 31, 2010”.

12 (C) Section 1400F(d) is amended by strik-  
13 ing “December 31, 2008” and inserting “De-  
14 cember 31, 2010”.

15 (d) FIRST-TIME HOMEBUYER CREDIT.—Subsection  
16 (i) of section 1400C is amended by striking “January 1,  
17 2004” and inserting “January 1, 2006”.

18 (e) EFFECTIVE DATES.—

19 (1) IN GENERAL.—Except as provided in para-  
20 graph (2), the amendments made by this section  
21 shall take effect on January 1, 2004.

22 (2) TAX-EXEMPT ECONOMIC DEVELOPMENT  
23 BONDS.—The amendment made by subsection (b)  
24 shall apply to obligations issued after the date of the  
25 enactment of this Act.

1 **SEC. 712. DISCLOSURE OF TAX INFORMATION TO FACILI-**  
2 **TATE COMBINED EMPLOYMENT TAX REPORT-**  
3 **ING.**

4 (a) IN GENERAL.—Paragraph (5) of section 6103(d)  
5 (relating to disclosure to State tax officials and State and  
6 local law enforcement agencies) is amended to read as fol-  
7 lows:

8 “(5) DISCLOSURE FOR COMBINED EMPLOY-  
9 MENT TAX REPORTING.—The Secretary may disclose  
10 taxpayer identity information and signatures to any  
11 agency, body, or commission of any State for the  
12 purpose of carrying out with such agency, body, or  
13 commission a combined Federal and State employ-  
14 ment tax reporting program approved by the Sec-  
15 retary. Subsections (a)(2) and (p)(4) and sections  
16 7213 and 7213A shall not apply with respect to dis-  
17 closures or inspections made pursuant to this para-  
18 graph.”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 this section shall take effect on the date of the enactment  
21 of this Act.

22 **SEC. 713. ALLOWANCE OF NONREFUNDABLE PERSONAL**  
23 **CREDITS AGAINST REGULAR AND MINIMUM**  
24 **TAX LIABILITY.**

25 (a) IN GENERAL.—Paragraph (2) of section 26(a) is  
26 amended—

1 (1) by striking “RULE FOR 2000, 2001, 2002, AND  
 2 2003.—” and inserting “RULE FOR TAXABLE YEARS  
 3 2000 THROUGH 2004.—”, and

4 (2) by striking “or 2003” and inserting “2003,  
 5 or 2004”.

6 (b) CONFORMING PROVISIONS.—

7 (1) Section 904(i), as redesignated by this Act,  
 8 is amended by striking “or 2003” and inserting  
 9 “2003, or 2004”.

10 (2) The amendments made by sections 201(b),  
 11 202(f), and 618(b) of the Economic Growth and Tax  
 12 Relief Reconciliation Act of 2001 shall not apply to  
 13 taxable years beginning during 2004.

14 (c) EFFECTIVE DATE.—The amendments made by  
 15 this section shall apply to taxable years beginning after  
 16 December 31, 2003.

17 **SEC. 714. CREDIT FOR ELECTRICITY PRODUCED FROM**  
 18 **CERTAIN RENEWABLE RESOURCES.**

19 (a) IN GENERAL.—Subparagraphs (A), (B), and (C)  
 20 of section 45(c)(3) are each amended by striking “January  
 21 1, 2004” and inserting “January 1, 2005”.

22 (b) EFFECTIVE DATE.—The amendments made by  
 23 subsection (a) shall apply to facilities placed in service  
 24 after December 31, 2003.

1 **SEC. 715. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLE-**  
 2 **TION FOR OIL AND NATURAL GAS PRODUCED**  
 3 **FROM MARGINAL PROPERTIES.**

4 (a) IN GENERAL.—Subparagraph (H) of section  
 5 613A(c)(6) is amended by striking “January 1, 2004” and  
 6 inserting “January 1, 2005”.

7 (b) EFFECTIVE DATE.—The amendment made by  
 8 subsection (a) shall apply to taxable years beginning after  
 9 December 31, 2003.

10 **SEC. 716. INDIAN EMPLOYMENT TAX CREDIT.**

11 Section 45A(f) (relating to termination) is amended  
 12 by striking “December 31, 2004” and inserting “Decem-  
 13 ber 31, 2005”.

14 **SEC. 717. ACCELERATED DEPRECIATION FOR BUSINESS**  
 15 **PROPERTY ON INDIAN RESERVATION.**

16 Section 168(j)(8) (relating to termination) is amend-  
 17 ed by striking “December 31, 2004” and inserting “De-  
 18 cember 31, 2005”.

19 **SEC. 718. DISCLOSURE OF RETURN INFORMATION RELAT-**  
 20 **ING TO STUDENT LOANS.**

21 Section 6103(l)(13)(D) (relating to termination) is  
 22 amended by striking “December 31, 2004” and inserting  
 23 “December 31, 2005”.

24 **SEC. 719. EXTENSION OF TRANSFERS OF EXCESS PENSION**  
 25 **ASSETS TO RETIREE HEALTH ACCOUNTS.**

26 (a) AMENDMENTS OF ERISA.—

1           (1) Section 101(e)(3) of the Employee Retirement  
 2           Income Security Act of 1974 (29 U.S.C.  
 3           1021(e)(3)) is amended by striking “Pension Fund-  
 4           ing Equity Act of 2004” and inserting “Jumpstart  
 5           Our Business Strength (JOBS) Act”.

6           (2) Section 403(c)(1) of such Act (29 U.S.C.  
 7           1103(c)(1)) is amended by striking “Pension Fund-  
 8           ing Equity Act of 2004” and inserting “Jumpstart  
 9           Our Business Strength (JOBS) Act”.

10          (3) Paragraph (13) of section 408(b) of such  
 11          Act (29 U.S.C. 1108(b)(3)) is amended by striking  
 12          “Pension Funding Equity Act of 2004” and insert-  
 13          ing “Jumpstart Our Business Strength (JOBS)  
 14          Act”.

15          (b) MINIMUM COST REQUIREMENTS.—

16           (1) IN GENERAL.—Section 420(c)(3)(E) is  
 17           amended by adding at the end the following new  
 18           clause:

19                   “(ii) INSIGNIFICANT COST REDUC-  
 20                   TIONS PERMITTED.—

21                           “(I) IN GENERAL.—An eligible  
 22                           employer shall not be treated as fail-  
 23                           ing to meet the requirements of this  
 24                           paragraph for any taxable year if, in  
 25                           lieu of any reduction of retiree health

1 coverage permitted under the regula-  
2 tions prescribed under clause (i), the  
3 employer reduces applicable employer  
4 cost by an amount not in excess of the  
5 reduction in costs which would have  
6 occurred if the employer had made the  
7 maximum permissible reduction in re-  
8 tiree health coverage under such regu-  
9 lations. In applying such regulations  
10 to any subsequent taxable year, any  
11 reduction in applicable employer cost  
12 under this clause shall be treated as if  
13 it were an equivalent reduction in re-  
14 tiree health coverage.

15 “(II) ELIGIBLE EMPLOYER.—For  
16 purposes of subclause (I), an employer  
17 shall be treated as an eligible em-  
18 ployer for any taxable year if, for the  
19 preceding taxable year, the qualified  
20 current retiree health liabilities of the  
21 employer were at least 5 percent of  
22 the gross receipts of the employer.  
23 For purposes of this subclause, the  
24 rules of paragraphs (2), (3)(B), and  
25 (3)(C) of section 448(c) shall apply in



1 determining the amount of an employ-  
2 er's gross receipts.”.

3 (2) CONFORMING AMENDMENT.—Section  
4 420(c)(3)(E) is amended by striking “The Sec-  
5 retary” and inserting:

6 “(i) IN GENERAL.—The Secretary”.

7 (3) EFFECTIVE DATE.—The amendments made  
8 by this subsection shall apply to taxable years end-  
9 ing after the date of the enactment of this Act.

10 **SEC. 720. ELIMINATION OF PHASEOUT OF CREDIT FOR**  
11 **QUALIFIED ELECTRIC VEHICLES.**

12 (a) IN GENERAL.—Section 30(b) is amended by  
13 striking paragraph (2) and by redesignating paragraph  
14 (3) as paragraph (2).

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 53(d)(1)(B)(iii) is amended by  
17 striking “section 30(b)(3)(B)” and inserting “sec-  
18 tion 30(b)(2)(B)”.

19 (2) Section 55(c)(2) is amended by striking  
20 “30(b)(3)” and inserting “30(b)(2)”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to property placed in service after  
23 December 31, 2003.

1 **SEC. 721. ELIMINATION OF PHASEOUT FOR DEDUCTION**  
2 **FOR CLEAN-FUEL VEHICLE PROPERTY.**

3 (a) IN GENERAL.—Paragraph (1) of section 179A(b)  
4 is amended to read as follows:

5 “(1) QUALIFIED CLEAN-FUEL VEHICLE PROP-  
6 ERTY.—The cost which may be taken into account  
7 under subsection (a)(1)(A) with respect to any  
8 motor vehicle shall not exceed—

9 “(A) in the case of a motor vehicle not de-  
10 scribed in subparagraph (B) or (C), \$2,000,

11 “(B) in the case of any truck or van with  
12 a gross vehicle weight rating greater than  
13 10,000 pounds but not greater than 26,000  
14 pounds, \$5,000, or

15 “(C) \$50,000 in the case of—

16 “(i) a truck or van with a gross vehi-  
17 cle weight rating greater than 26,000  
18 pounds, or

19 “(ii) any bus which has a seating ca-  
20 pacity of at least 20 adults (not including  
21 the driver).”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 subsection (a) shall apply to property placed in service  
24 after December 31, 2003.

1       **Subtitle B—Revenue Provisions**

2       **SEC. 731. DONATIONS OF MOTOR VEHICLES, BOATS, AND**  
3               **AIRPLANES.**

4           (a) IN GENERAL.—Subsection (f) of section 170 (re-  
5       lating to disallowance of deduction in certain cases and  
6       special rules) is amended by adding at the end the fol-  
7       lowing new paragraph:

8                   “(11) CONTRIBUTIONS OF USED MOTOR VEHI-  
9       CLES, BOATS, AND AIRPLANES.—

10                   “(A) IN GENERAL.—In the case of a con-  
11       tribution of a qualified vehicle in excess of  
12       \$500—

13                           “(i) paragraph (8) shall not apply and  
14       no deduction shall be allowed under sub-  
15       section (a) for such contribution unless the  
16       taxpayer substantiates the contribution by  
17       a contemporaneous written acknowledge-  
18       ment of the contribution by the donee or-  
19       ganization that meets the requirements of  
20       subparagraph (B) and includes the ac-  
21       knowledge with the taxpayer’s return  
22       of tax which includes the deduction, and

23                           “(ii) if the organization sells the vehi-  
24       cle without any significant intervening use  
25       or material improvement of such vehicle by

1 the organization, the amount of the deduc-  
2 tion allowed under subsection (a) shall not  
3 exceed the gross proceeds received from  
4 such sale.

5 “(B) CONTENT OF ACKNOWLEDGEMENT.—  
6 An acknowledgement meets the requirements of  
7 this subparagraph if it includes the following  
8 information:

9 “(i) The name and taxpayer identi-  
10 fication number of the donor.

11 “(ii) The vehicle identification number  
12 or similar number.

13 “(iii) In the case of a qualified vehicle  
14 to which subparagraph (A)(ii) applies and  
15 which is sold by the donee organization—

16 “(I) a certification that the vehi-  
17 cle was sold in an arm’s length trans-  
18 action between unrelated parties,

19 “(II) the gross proceeds from the  
20 sale, and

21 “(III) that the deductible amount  
22 may not exceed the amount of such  
23 gross proceeds.

1 “(iv) In the case of a qualified vehicle  
2 to which subparagraph (A)(ii) does not  
3 apply—

4 “(I) a certification of the in-  
5 tended use or material improvement  
6 of the vehicle and the intended dura-  
7 tion of such use, and

8 “(II) a certification that the vehi-  
9 cle would not be transferred in ex-  
10 change for money, other property, or  
11 services before completion of such use  
12 or improvement.

13 “(C) CONTEMPORANEOUS.—For purposes  
14 of subparagraph (A), an acknowledgement shall  
15 be considered to be contemporaneous if the  
16 donee organization provides it within 30 days  
17 of—

18 “(i) the sale of the qualified vehicle,  
19 or

20 “(ii) in the case of an acknowledge-  
21 ment including a certification described in  
22 subparagraph (B)(iv), the contribution of  
23 the qualified vehicle.

24 “(D) INFORMATION TO SECRETARY.—A  
25 donee organization required to provide an ac-

1 knowledge under this paragraph shall pro-  
 2 vide to the Secretary the information contained  
 3 in the acknowledgement. Such information shall  
 4 be provided at such time and in such manner  
 5 as the Secretary may prescribe.

6 “(E) QUALIFIED VEHICLE.—For purposes  
 7 of this paragraph, the term ‘qualified vehicle’  
 8 means any—

9 “(i) self-propelled vehicle manufac-  
 10 tured primarily for use on public streets,  
 11 roads, and highways,

12 “(ii) boat, or

13 “(iii) airplane.

14 Such term shall not include any property which  
 15 is described in section 1221(a)(1).

16 “(F) REGULATIONS OR OTHER GUID-  
 17 ANCE.—The Secretary shall prescribe such reg-  
 18 ulations or other guidance as may be necessary  
 19 to carry out the purposes of this paragraph.”.

20 (b) PENALTY FOR FRAUDULENT ACKNOWLEDG-  
 21 MENTS.—

22 (1) IN GENERAL.—Part I of subchapter B of  
 23 chapter 68 (relating to assessable penalties), as  
 24 amended by section 882(c) of this Act, is amended  
 25 adding at the end the following new section:

1 **“SEC. 6720A. FRAUDULENT ACKNOWLEDGMENTS WITH RE-**  
 2 **SPECT TO DONATIONS OF MOTOR VEHICLES,**  
 3 **BOATS, AND AIRPLANES.**

4 “Any donee organization required under section  
 5 170(f)(11)(A) to furnish a contemporaneous written ac-  
 6 knowledgment to a donor which knowingly furnishes a  
 7 false or fraudulent acknowledgment, or which knowingly  
 8 fails to furnish such acknowledgment in the manner, at  
 9 the time, and showing the information required under sec-  
 10 tion 170(f)(11), or regulations prescribed thereunder,  
 11 shall for each such act, or for each such failure, be subject  
 12 to a penalty equal to—

13 “(1) in the case of an acknowledgment with re-  
 14 spect to a qualified vehicle to which section  
 15 170(f)(11)(A)(ii) applies, the greater of the value of  
 16 the tax benefit to the donor or the gross proceeds  
 17 from the sale of such vehicle, and

18 “(2) in the case of an acknowledgment with re-  
 19 spect to any other qualified vehicle to which section  
 20 170(f)(11) applies, the greater of the value of the  
 21 tax benefit to the donor or \$5,000.”.

22 (2) CONFORMING AMENDMENT.—The table of  
 23 sections for part I of subchapter B of chapter 68,  
 24 as amended by section 882(c) of this Act, is amend-  
 25 ed by adding at the end the following new item:

“Sec. 6720A. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to contributions after June 30,  
3 2004.

4 **SEC. 732. ADDITION OF VACCINES AGAINST INFLUENZA TO**  
5 **LIST OF TAXABLE VACCINES.**

6 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-  
7 able vaccine), as amended by this Act, is amended adding  
8 at the end the following new subparagraph:

9 “(N) Any trivalent vaccine against influ-  
10 enza.”.

11 (b) EFFECTIVE DATE.—

12 (1) SALES, ETC.—The amendment made by this  
13 section shall apply to sales and uses on or after the  
14 later of—

15 (A) the first day of the first month which  
16 begins more than 4 weeks after the date of the  
17 enactment of this Act, or

18 (B) the date on which the Secretary of  
19 Health and Human Services lists any vaccine  
20 against influenza for purposes of compensation  
21 for any vaccine-related injury or death through  
22 the Vaccine Injury Compensation Trust Fund.

23 (2) DELIVERIES.—For purposes of paragraph  
24 (1) and section 4131 of the Internal Revenue Code



1 of 1986, in the case of sales on or before the effec-  
2 tive date described in such paragraph for which de-  
3 livery is made after such date, the delivery date shall  
4 be considered the sale date.

5 **SEC. 733. TREATMENT OF CONTINGENT PAYMENT CON-**  
6 **VERTIBLE DEBT INSTRUMENTS.**

7 (a) IN GENERAL.—Section 1275(d) (relating to regu-  
8 lation authority) is amended—

9 (1) by striking “The Secretary” and inserting  
10 the following:

11 “(1) IN GENERAL.—The Secretary”, and

12 (2) by adding at the end the following new  
13 paragraph:

14 “(2) TREATMENT OF CONTINGENT PAYMENT  
15 CONVERTIBLE DEBT.—

16 “(A) IN GENERAL.—In the case of a debt  
17 instrument which—

18 “(i) is convertible into stock of the  
19 issuing corporation, into stock or debt of a  
20 related party (within the meaning of sec-  
21 tion 267(b) or 707(b)(1)), or into cash or  
22 other property in an amount equal to the  
23 approximate value of such stock or debt,  
24 and

1                   “(ii) provides for contingent pay-  
2                   ments,  
3                   any regulations which require original issue dis-  
4                   count to be determined by reference to the com-  
5                   parable yield of a noncontingent fixed rate debt  
6                   instrument shall be applied as requiring that  
7                   such comparable yield be determined by ref-  
8                   erence to a noncontingent fixed rate debt in-  
9                   strument which is convertible into stock.

10                  “(B) SPECIAL RULE.—For purposes of  
11                  subparagraph (A), the comparable yield shall be  
12                  determined without taking into account the  
13                  yield resulting from the conversion of a debt in-  
14                  strument into stock.”.

15                  (b) CROSS REFERENCE.—Section 163(e)(6) (relating  
16                  to cross references) is amended by adding at the end the  
17                  following:

18                  “For the treatment of contingent payment con-  
19                  vertible debt, see section 1275(d)(2).”.

20                  (c) EFFECTIVE DATE.—The amendments made by  
21                  this section shall apply to debt instruments issued after  
22                  the date of the enactment of this Act.

1 **SEC. 734. MODIFICATION OF CONTINUING LEVY ON PAY-**  
 2 **MENTS TO FEDERAL VENDERS.**

3 (a) IN GENERAL.—Section 6331(h) (relating to con-  
 4 tinuing levy on certain payments) is amended by adding  
 5 at the end the following new paragraph:

6 “(3) INCREASE IN LEVY FOR CERTAIN PAY-  
 7 MENTS.—Paragraph (1) shall be applied by sub-  
 8 stituting ‘100 percent’ for ‘15 percent’ in the case  
 9 of any specified payment due to a vendor of goods  
 10 or services sold or leased to the Federal Govern-  
 11 ment.”.

12 (b) EFFECTIVE DATE.—The amendment made by  
 13 this section shall take effect on the date of the enactment  
 14 of this Act.

15 **TITLE VIII—ENERGY TAX**  
 16 **INCENTIVES**

17 **SEC. 800. SHORT TITLE.**

18 This title may be cited as the “Energy Tax Incentives  
 19 Act”.

20 **Subtitle A—Renewable Electricity**  
 21 **Production Tax Credit**

22 **SEC. 801. EXTENSION AND EXPANSION OF CREDIT FOR**  
 23 **ELECTRICITY PRODUCED FROM CERTAIN RE-**  
 24 **NEWABLE RESOURCES.**

25 (a) EXPANSION OF QUALIFIED ENERGY RE-  
 26 SOURCES.—Subsection (c) of section 45 (relating to elec-

1 tricity produced from certain renewable resources) is  
 2 amended to read as follows:

3 “(c) QUALIFIED ENERGY RESOURCES.—For pur-  
 4 poses of this section—

5 “(1) IN GENERAL.—The term ‘qualified energy  
 6 resources’ means—

7 “(A) wind,

8 “(B) closed-loop biomass,

9 “(C) open-loop biomass,

10 “(D) geothermal energy,

11 “(E) solar energy,

12 “(F) small irrigation power,

13 “(G) biosolids and sludge, and

14 “(H) municipal solid waste.

15 “(2) CLOSED-LOOP BIOMASS.—The term  
 16 ‘closed-loop biomass’ means any organic material  
 17 from a plant which is planted exclusively for pur-  
 18 poses of being used at a qualified facility to produce  
 19 electricity.

20 “(3) OPEN-LOOP BIOMASS.—

21 “(A) IN GENERAL.—The term ‘open-loop  
 22 biomass’ means—

23 “(i) any agricultural livestock waste  
 24 nutrients, or

1           “(ii) any solid, nonhazardous, cel-  
2           lulosic waste material which is segregated  
3           from other waste materials and which is  
4           derived from—

5                   “(I) any of the following forest-  
6                   related resources: mill and harvesting  
7                   residues, precommercial thinnings,  
8                   slash, and brush; but not including  
9                   spent chemicals from pulp manufac-  
10                  turing,

11                  “(II) solid wood waste materials,  
12                  including waste pallets, crates,  
13                  dunnage, manufacturing and con-  
14                  struction wood wastes (other than  
15                  pressure-treated, chemically-treated,  
16                  or painted wood wastes), and land-  
17                  scape or right-of-way tree trimmings,  
18                  but not including municipal solid  
19                  waste, gas derived from the bio-  
20                  degradation of solid waste, or paper  
21                  which is commonly recycled, or

22                  “(III) agriculture sources, includ-  
23                  ing orchard tree crops, vineyard,  
24                  grain, legumes, sugar, and other crop  
25                  by-products or residues.

1                   “(B) AGRICULTURAL LIVESTOCK WASTE  
2                   NUTRIENTS.—

3                   “(i) IN GENERAL.—The term ‘agricul-  
4                   tural livestock waste nutrients’ means agri-  
5                   cultural livestock manure and litter, includ-  
6                   ing wood shavings, straw, rice hulls, and  
7                   other bedding material for the disposition  
8                   of manure.

9                   “(ii) AGRICULTURAL LIVESTOCK.—  
10                  The term ‘agricultural livestock’ includes  
11                  bovine, swine, poultry, and sheep.

12                  “(C) EXCEPTIONS.—The term ‘open-loop  
13                  biomass’ does not include—

14                         “(i) closed-loop biomass, or

15                         “(ii) biomass burned in conjunction  
16                         with fossil fuel (cofiring) beyond such fossil  
17                         fuel required for startup and flame sta-  
18                         bilization.

19                  “(4) GEOTHERMAL ENERGY.—The term ‘geo-  
20                  thermal energy’ means energy derived from a geo-  
21                  thermal deposit (within the meaning of section  
22                  613(e)(2)).

23                  “(5) SMALL IRRIGATION POWER.—The term  
24                  ‘small irrigation power’ means power—

1           “(A) generated without any dam or im-  
 2           poundment of water through an irrigation sys-  
 3           tem canal or ditch, and

4           “(B) the installed capacity of which is less  
 5           than 5 megawatts.

6           “(6) BIOSOLIDS AND SLUDGE.—The term ‘bio-  
 7           solids and sludge’ means the residue or solids re-  
 8           moved in the treatment of commercial, industrial, or  
 9           municipal wastewater.

10          “(7) MUNICIPAL SOLID WASTE.—The term  
 11          ‘municipal solid waste’ has the meaning given the  
 12          term ‘solid waste’ under section 2(27) of the Solid  
 13          Waste Disposal Act (42 U.S.C. 6903).”.

14          (b) EXTENSION AND EXPANSION OF QUALIFIED FA-  
 15          CILITIES.—

16               (1) IN GENERAL.—Section 45 is amended by  
 17               redesignating subsection (d) as subsection (e) and by  
 18               inserting after subsection (c) the following new sub-  
 19               section:

20               “(d) QUALIFIED FACILITIES.—For purposes of this  
 21               section—

22                       “(1) WIND FACILITY.—In the case of a facility  
 23                       using wind to produce electricity, the term ‘qualified  
 24                       facility’ means any facility owned by the taxpayer

1 which is originally placed in service after December  
2 31, 1993, and before January 1, 2007.

3 “(2) CLOSED-LOOP BIOMASS FACILITY.—

4 “(A) IN GENERAL.—In the case of a facil-  
5 ity using closed-loop biomass to produce elec-  
6 tricity, the term ‘qualified facility’ means any  
7 facility—

8 “(i) owned by the taxpayer which is  
9 originally placed in service after December  
10 31, 1992, and before January 1, 2007, or

11 “(ii) owned by the taxpayer which be-  
12 fore January 1, 2007, is originally placed  
13 in service and modified to use closed-loop  
14 biomass to co-fire with coal, with other bio-  
15 mass, or with both, but only if the modi-  
16 fication is approved under the Biomass  
17 Power for Rural Development Programs or  
18 is part of a pilot project of the Commodity  
19 Credit Corporation as described in 65 Fed.  
20 Reg. 63052.

21 “(B) SPECIAL RULES.—In the case of a  
22 qualified facility described in subparagraph  
23 (A)(ii)—



1 “(i) the 10-year period referred to in  
2 subsection (a) shall be treated as beginning  
3 no earlier than January 1, 2005,

4 “(ii) the amount of the credit deter-  
5 mined under subsection (a) with respect to  
6 the facility shall be an amount equal to the  
7 amount determined without regard to this  
8 clause multiplied by the ratio of the ther-  
9 mal content of the closed-loop biomass  
10 used in such facility to the thermal content  
11 of all fuels used in such facility, and

12 “(iii) if the owner of such facility is  
13 not the producer of the electricity, the per-  
14 son eligible for the credit allowable under  
15 subsection (a) shall be the lessee or the op-  
16 erator of such facility.

17 “(3) OPEN-LOOP BIOMASS FACILITY.—

18 “(A) IN GENERAL.—In the case of a facil-  
19 ity using open-loop biomass to produce elec-  
20 tricity for grid sale in excess of its internal re-  
21 quirements, the term ‘qualified facility’ means  
22 any facility owned by the taxpayer which—

23 “(i) in the case of a facility using ag-  
24 ricultural livestock waste nutrients, is

1 originally placed in service after December  
 2 31, 2004, and before January 1, 2007, and  
 3 “(ii) in the case of any other facility,  
 4 is originally placed in service before Janu-  
 5 ary 1, 2005.

6 “(B) SPECIAL RULES FOR PREEFFECTIVE  
 7 DATE FACILITIES.—In the case of any facility  
 8 described in subparagraph (A)(ii) which is  
 9 placed in service before January 1, 2005—

10 “(i) subsection (a)(1) shall be applied  
 11 by substituting ‘1.2 cents’ for ‘1.5 cents’,  
 12 and

13 “(ii) the 5-year period beginning on  
 14 January 1, 2005, shall be substituted for  
 15 the 10-year period in subsection  
 16 (a)(2)(A)(ii).

17 “(C) CREDIT ELIGIBILITY.—In the case of  
 18 any facility described in subparagraph (A), if  
 19 the owner of such facility is not the producer of  
 20 the electricity, the person eligible for the credit  
 21 allowable under subsection (a) shall be the les-  
 22 see or the operator of such facility.

23 “(4) GEOTHERMAL OR SOLAR ENERGY FACIL-  
 24 ITY.—In the case of a facility using geothermal or  
 25 solar energy to produce electricity, the term ‘quali-

1       fied facility’ means any facility owned by the tax-  
2       payer which is originally placed in service after De-  
3       cember 31, 2004, and before January 1, 2007. Such  
4       term shall not include any property described in sec-  
5       tion 48(a)(3) the basis of which is taken into ac-  
6       count by the taxpayer for purposes of determining  
7       the energy credit under section 48.

8               “(5) SMALL IRRIGATION POWER FACILITY.—In  
9       the case of a facility using small irrigation power to  
10      produce electricity, the term ‘qualified facility’  
11      means any facility owned by the taxpayer which is  
12      originally placed in service after December 31, 2004,  
13      and before January 1, 2007.

14              “(6) BIOSOLIDS AND SLUDGE FACILITY.—In  
15      the case of a facility using waste heat from the in-  
16      cineration of biosolids and sludge to produce elec-  
17      tricity, the term ‘qualified facility’ means any facility  
18      owned by the taxpayer which is originally placed in  
19      service after December 31, 2004, and before Janu-  
20      ary 1, 2007. Such term shall not include any prop-  
21      erty described in section 48(a)(3) the basis of which  
22      is taken into account for purposes of the energy  
23      credit under section 46.

24              “(7) MUNICIPAL SOLID WASTE FACILITY.—

1           “(A) IN GENERAL.—In the case of a facil-  
2           ity or unit incinerating municipal solid waste to  
3           produce electricity, the term ‘qualified facility’  
4           means any facility or unit owned by the tax-  
5           payer which is originally placed in service after  
6           December 31, 2004, and before January 1,  
7           2007.

8           “(B) SPECIAL RULE.—In the case of any  
9           facility or unit described in subparagraph (A),  
10          the 5-year period beginning on the date the fa-  
11          cility or unit was originally placed in service  
12          shall be substituted for the 10-year period in  
13          subsection (a)(2)(A)(ii).

14          “(C) CREDIT ELIGIBILITY.—In the case of  
15          any qualified facility described in subparagraph  
16          (A), if the owner of such facility is not the pro-  
17          ducer of the electricity, the person eligible for  
18          the credit allowable under subsection (a) shall  
19          be the lessee or the operator of such facility.”.

20          (2) NO CREDIT FOR CERTAIN PRODUCTION.—  
21          Section 45(e) (relating to definitions and special  
22          rules), as redesignated by paragraph (1), is amended  
23          by striking paragraph (6) and inserting the following  
24          new paragraph:

1           “(6) OPERATIONS INCONSISTENT WITH SOLID  
 2       WASTE DISPOSAL ACT.—In the case of a qualified fa-  
 3       cility described in subsection (d)(6)(A), subsection  
 4       (a) shall not apply to electricity produced at such fa-  
 5       cility during any taxable year if, during a portion of  
 6       such year, there is a certification in effect by the  
 7       Administrator of the Environmental Protection  
 8       Agency that such facility was permitted to operate  
 9       in a manner inconsistent with section 4003(d) of the  
 10      Solid Waste Disposal Act (42 U.S.C. 6943(d)).”.

11           (3) CONFORMING AMENDMENT.—Section 45(e),  
 12       as so redesignated, is amended by striking “sub-  
 13       section (c)(3)(A)” in paragraph (7)(A)(i) and insert-  
 14       ing “subsection (d)(1)”.

15       (c) CREDIT RATE FOR ELECTRICITY PRODUCED  
 16      FROM NEW FACILITIES.—

17           (1) IN GENERAL.—Section 45(a) is amended by  
 18       adding at the end the following new flush sentence:  
 19       “In the case of electricity produced after December 31,  
 20       2004, at any qualified facility originally placed in service  
 21       after such date, paragraph (1) shall be applied by sub-  
 22       stituting ‘1.8 cents’ for ‘1.5 cents’.”.

23           (2) NEW RATE NOT SUBJECT TO INFLATION  
 24       ADJUSTMENT.—Section 45(b)(2) (relating to credit  
 25       and phaseout adjustment based on inflation) is

1       amended by adding at the end the following new  
2       sentence: “This paragraph shall not apply to any  
3       amount which is substituted for the 1.5 cent amount  
4       in subsection (a) by reason of any provision of this  
5       section.”.

6       (d) ELIMINATION OF CERTAIN CREDIT REDUC-  
7       TIONS.—Section 45(b)(3)(A) (relating to credit reduced  
8       for grants, tax-exempt bonds, subsidized energy financing,  
9       and other credits) is amended—

10           (1) by striking clause (ii),

11           (2) by redesignating clauses (iii) and (iv) as  
12       clauses (ii) and (iii),

13           (3) by inserting “(other than proceeds of an  
14       issue of State or local government obligations the in-  
15       terest on which is exempt from tax under section  
16       103, or any loan, debt, or other obligation incurred  
17       under subchapter I of chapter 31 of title 7 of the  
18       Rural Electrification Act of 1936 (7 U.S.C. 901 et  
19       seq.), as in effect on the date of the enactment of  
20       the Energy Tax Incentives Act)” after “project” in  
21       clause (ii) (as so redesignated),

22           (4) by adding at the end the following new sen-  
23       tence: “This paragraph shall not apply with respect  
24       to any facility described in subsection (d)(2)(A)(ii).”,  
25       and

1           (5) by striking “TAX-EXEMPT BONDS,” in the  
2           heading and inserting “CERTAIN”.

3           (e) TREATMENT OF PERSONS NOT ABLE TO USE  
4 ENTIRE CREDIT.—Section 45(e) (relating to definitions  
5 and special rules), as redesignated by subsection (b)(1),  
6 is amended by adding at the end the following new para-  
7 graph:

8           “(8) TREATMENT OF PERSONS NOT ABLE TO  
9           USE ENTIRE CREDIT.—

10           “(A) ALLOWANCE OF CREDIT.—

11           “(i) IN GENERAL.—Except as other-  
12           wise provided in this subsection—

13           “(I) any credit allowable under  
14           subsection (a) with respect to a quali-  
15           fied facility owned by a person de-  
16           scribed in clause (ii) may be trans-  
17           ferred or used as provided in this  
18           paragraph, and

19           “(II) the determination as to  
20           whether the credit is allowable shall  
21           be made without regard to the tax-ex-  
22           empt status of the person.

23           “(ii) PERSONS DESCRIBED.—A person  
24           is described in this clause if the person  
25           is—

1 “(I) an organization described in  
2 section 501(c)(12)(C) and exempt  
3 from tax under section 501(a),

4 “(II) an organization described  
5 in section 1381(a)(2)(C),

6 “(III) a public utility (as defined  
7 in section 136(c)(2)(B)), which is ex-  
8 empt from income tax under this sub-  
9 title,

10 “(IV) any State or political sub-  
11 division thereof, the District of Co-  
12 lumbia, any possession of the United  
13 States, or any agency or instrumen-  
14 tality of any of the foregoing,

15 “(V) any Indian tribal govern-  
16 ment (within the meaning of section  
17 7871) or any agency or instrumen-  
18 tality thereof, or

19 “(VI) the Tennessee Valley Au-  
20 thority.

21 “(B) TRANSFER OF CREDIT.—

22 “(i) IN GENERAL.—A person de-  
23 scribed in subclause (I), (II), (III), (IV), or  
24 (V) of subparagraph (A)(ii) may transfer  
25 any credit to which subparagraph (A)(i)



1 applies through an assignment to any  
2 other person not described in subpara-  
3 graph (A)(ii). Such transfer may be re-  
4 voked only with the consent of the Sec-  
5 retary.

6 “(ii) REGULATIONS.—The Secretary  
7 shall prescribe such regulations as nec-  
8 essary to ensure that any credit described  
9 in clause (i) is assigned once and not reas-  
10 signed by such other person.

11 “(iii) TRANSFER PROCEEDS TREATED  
12 AS ARISING FROM ESSENTIAL GOVERN-  
13 MENT FUNCTION.—Any proceeds derived  
14 by a person described in subclause (III),  
15 (IV), or (V) of subparagraph (A)(ii) from  
16 the transfer of any credit under clause (i)  
17 shall be treated as arising from the exer-  
18 cise of an essential government function.

19 “(C) USE OF CREDIT AS AN OFFSET.—  
20 Notwithstanding any other provision of law, in  
21 the case of a person described in subclause (I),  
22 (II), or (V) of subparagraph (A)(ii), any credit  
23 to which subparagraph (A)(i) applies may be  
24 applied by such person, to the extent provided  
25 by the Secretary of Agriculture, as a prepay-

1           ment of any loan, debt, or other obligation the  
2           entity has incurred under subchapter I of chap-  
3           ter 31 of title 7 of the Rural Electrification Act  
4           of 1936 (7 U.S.C. 901 et seq.), as in effect on  
5           the date of the enactment of the Energy Tax  
6           Incentives Act.

7           “(D) USE BY TVA.—

8           “(i) IN GENERAL.—Notwithstanding  
9           any other provision of law, in the case of  
10          a person described in subparagraph  
11          (A)(ii)(VI), any credit to which subpara-  
12          graph (A)(i) applies may be applied as a  
13          credit against the payments required to be  
14          made in any fiscal year under section  
15          15d(e) of the Tennessee Valley Authority  
16          Act of 1933 (16 U.S.C. 831n–4(e)) as an  
17          annual return on the appropriations invest-  
18          ment and an annual repayment sum.

19          “(ii) TREATMENT OF CREDITS.—The  
20          aggregate amount of credits described in  
21          subparagraph (A)(i) with respect to such  
22          person shall be treated in the same manner  
23          and to the same extent as if such credits  
24          were a payment in cash and shall be ap-

1           plied first against the annual return on the  
2           appropriations investment.

3           “(iii) CREDIT CARRYOVER.—With re-  
4           spect to any fiscal year, if the aggregate  
5           amount of credits described subparagraph  
6           (A)(i) with respect to such person exceeds  
7           the aggregate amount of payment obliga-  
8           tions described in clause (i), the excess  
9           amount shall remain available for applica-  
10          tion as credits against the amounts of such  
11          payment obligations in succeeding fiscal  
12          years in the same manner as described in  
13          this subparagraph.

14          “(E) CREDIT NOT INCOME.—Any transfer  
15          under subparagraph (B) or use under subpara-  
16          graph (C) of any credit to which subparagraph  
17          (A)(i) applies shall not be treated as income for  
18          purposes of section 501(c)(12).

19          “(F) TREATMENT OF UNRELATED PER-  
20          SONS.—For purposes of subsection (a)(2)(B),  
21          sales of electricity among and between persons  
22          described in subparagraph (A)(ii) shall be treat-  
23          ed as sales between unrelated parties.”.

24          (f) EFFECTIVE DATES.—

1           (1) IN GENERAL.—Except as otherwise pro-  
2       vided in this subsection, the amendments made by  
3       this section shall apply to electricity produced and  
4       sold after December 31, 2004, in taxable years end-  
5       ing after such date.

6           (2) CERTAIN BIOMASS FACILITIES.—With re-  
7       spect to any facility described in section  
8       45(d)(3)(A)(ii) of the Internal Revenue Code of  
9       1986, as added by subsection (b)(1), which is placed  
10      in service before the date of the enactment of this  
11      Act, the amendments made by this section shall  
12      apply to electricity produced and sold after Decem-  
13      ber 31, 2004, in taxable years ending after such  
14      date.

15          (3) CREDIT RATE FOR NEW FACILITIES.—The  
16      amendments made by subsection (c) shall apply to  
17      electricity produced and sold after December 31,  
18      2004, in taxable years ending after such date.

19          (4) NONAPPLICATION OF AMENDMENTS TO  
20      PREEFFECTIVE DATE POULTRY WASTE FACILI-  
21      TIES.—The amendments made by this section shall  
22      not apply with respect to any poultry waste facility  
23      (within the meaning of section 45(c)(3)(C), as in ef-  
24      fect on December 31, 2004) placed in service on or  
25      before such date.

1       **Subtitle B—Alternative Motor**  
2       **Vehicles and Fuels Incentives**

3       **SEC. 811. ALTERNATIVE MOTOR VEHICLE CREDIT.**

4       (a) IN GENERAL.—Subpart B of part IV of sub-  
5 chapter A of chapter 1 (relating to foreign tax credit, etc.),  
6 as amended by this Act, is amended by adding at the end  
7 the following new section:

8       **“SEC. 30C. ALTERNATIVE MOTOR VEHICLE CREDIT.**

9       “(a) ALLOWANCE OF CREDIT.—There shall be al-  
10 lowed as a credit against the tax imposed by this chapter  
11 for the taxable year an amount equal to the sum of—

12               “(1) the new qualified fuel cell motor vehicle  
13 credit determined under subsection (b),

14               “(2) the new qualified hybrid motor vehicle  
15 credit determined under subsection (c), and

16               “(3) the new qualified alternative fuel motor ve-  
17 hicle credit determined under subsection (d).

18       “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE  
19 CREDIT.—

20               “(1) IN GENERAL.—For purposes of subsection  
21 (a), the new qualified fuel cell motor vehicle credit  
22 determined under this subsection with respect to a  
23 new qualified fuel cell motor vehicle placed in service  
24 by the taxpayer during the taxable year is—

1           “(A) \$4,000, if such vehicle has a gross ve-  
2           hicle weight rating of not more than 8,500  
3           pounds,

4           “(B) \$10,000, if such vehicle has a gross  
5           vehicle weight rating of more than 8,500  
6           pounds but not more than 14,000 pounds,

7           “(C) \$20,000, if such vehicle has a gross  
8           vehicle weight rating of more than 14,000  
9           pounds but not more than 26,000 pounds, and

10          “(D) \$40,000, if such vehicle has a gross  
11          vehicle weight rating of more than 26,000  
12          pounds.

13          “(2) INCREASE FOR FUEL EFFICIENCY.—

14          “(A) IN GENERAL.—The amount deter-  
15          mined under paragraph (1)(A) with respect to  
16          a new qualified fuel cell motor vehicle which is  
17          a passenger automobile or light truck shall be  
18          increased by—

19                 “(i) \$1,000, if such vehicle achieves at  
20                 least 150 percent but less than 175 per-  
21                 cent of the 2002 model year city fuel econ-  
22                 omy,

23                 “(ii) \$1,500, if such vehicle achieves  
24                 at least 175 percent but less than 200 per-

1 cent of the 2002 model year city fuel econ-  
2 omy,

3 “(iii) \$2,000, if such vehicle achieves  
4 at least 200 percent but less than 225 per-  
5 cent of the 2002 model year city fuel econ-  
6 omy,

7 “(iv) \$2,500, if such vehicle achieves  
8 at least 225 percent but less than 250 per-  
9 cent of the 2002 model year city fuel econ-  
10 omy,

11 “(v) \$3,000, if such vehicle achieves  
12 at least 250 percent but less than 275 per-  
13 cent of the 2002 model year city fuel econ-  
14 omy,

15 “(vi) \$3,500, if such vehicle achieves  
16 at least 275 percent but less than 300 per-  
17 cent of the 2002 model year city fuel econ-  
18 omy, and

19 “(vii) \$4,000, if such vehicle achieves  
20 at least 300 percent of the 2002 model  
21 year city fuel economy.

22 “(B) 2002 MODEL YEAR CITY FUEL ECON-  
23 OMY.—For purposes of subparagraph (A), the  
24 2002 model year city fuel economy with respect

1 to a vehicle shall be determined in accordance  
 2 with the following tables:

3 “(i) In the case of a passenger auto-  
 4 mobile:

| <b>“If vehicle inertia weight class is:</b> | <b>The 2002 model year city fuel economy is:</b> |
|---|--|
| 1,500 or 1,750 lbs .....                    | 45.2 mpg   |
| 2,000 lbs .....                             | 39.6 mpg   |
| 2,250 lbs .....                             | 35.2 mpg   |
| 2,500 lbs .....                             | 31.7 mpg   |
| 2,750 lbs .....                             | 28.8 mpg   |
| 3,000 lbs .....                             | 26.4 mpg   |
| 3,500 lbs .....                             | 22.6 mpg   |
| 4,000 lbs .....                             | 19.8 mpg   |
| 4,500 lbs .....                             | 17.6 mpg   |
| 5,000 lbs .....                             | 15.9 mpg   |
| 5,500 lbs .....                             | 14.4 mpg   |
| 6,000 lbs .....                             | 13.2 mpg   |
| 6,500 lbs .....                             | 12.2 mpg   |
| 7,000 to 8,500 lbs .....                    | 11.3 mpg.  |

5 “(ii) In the case of a light truck:

| <b>“If vehicle inertia weight class is:</b> | <b>The 2002 model year city fuel economy is:</b> |
|---|--|
| 1,500 or 1,750 lbs .....                    | 39.4 mpg   |
| 2,000 lbs .....                             | 35.2 mpg   |
| 2,250 lbs .....                             | 31.8 mpg   |
| 2,500 lbs .....                             | 29.0 mpg   |
| 2,750 lbs .....                             | 26.8 mpg   |
| 3,000 lbs .....                             | 24.9 mpg   |
| 3,500 lbs .....                             | 21.8 mpg   |
| 4,000 lbs .....                             | 19.4 mpg   |
| 4,500 lbs .....                             | 17.6 mpg   |
| 5,000 lbs .....                             | 16.1 mpg   |
| 5,500 lbs .....                             | 14.8 mpg   |
| 6,000 lbs .....                             | 13.7 mpg   |
| 6,500 lbs .....                             | 12.8 mpg   |
| 7,000 to 8,500 lbs .....                    | 12.1 mpg.  |

6 “(C) VEHICLE INERTIA WEIGHT CLASS.—

7 For purposes of subparagraph (B), the term  
 8 ‘vehicle inertia weight class’ has the same  
 9 meaning as when defined in regulations pre-  
 10 scribed by the Administrator of the Environ-



1           mental Protection Agency for purposes of the  
2           administration of title II of the Clean Air Act  
3           (42 U.S.C. 7521 et seq.).

4           “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-  
5           CLE.—For purposes of this subsection, the term  
6           ‘new qualified fuel cell motor vehicle’ means a motor  
7           vehicle—

8                   “(A) which is propelled by power derived  
9                   from 1 or more cells which convert chemical en-  
10                  ergy directly into electricity by combining oxy-  
11                  gen with hydrogen fuel which is stored on board  
12                  the vehicle in any form and may or may not re-  
13                  quire reformation prior to use,

14                  “(B) which, in the case of a passenger  
15                  automobile or light truck—

16                   “(i) for 2002 and later model vehicles,  
17                   has received a certificate of conformity  
18                   under the Clean Air Act and meets or ex-  
19                   ceeds the equivalent qualifying California  
20                   low emission vehicle standard under sec-  
21                   tion 243(e)(2) of the Clean Air Act for  
22                   that make and model year, and

23                   “(ii) for 2004 and later model vehi-  
24                   cles, has received a certificate that such ve-  
25                   hicle meets or exceeds the Bin 5 Tier II

1 emission level established in regulations  
 2 prescribed by the Administrator of the En-  
 3 vironmental Protection Agency under sec-  
 4 tion 202(i) of the Clean Air Act for that  
 5 make and model year vehicle,

6 “(C) the original use of which commences  
 7 with the taxpayer,

8 “(D) which is acquired for use or lease by  
 9 the taxpayer and not for resale, and

10 “(E) which is made by a manufacturer.

11 “(c) NEW QUALIFIED HYBRID MOTOR VEHICLE  
 12 CREDIT.—

13 “(1) IN GENERAL.—For purposes of subsection  
 14 (a), the new qualified hybrid motor vehicle credit de-  
 15 termined under this subsection with respect to a new  
 16 qualified hybrid motor vehicle placed in service by  
 17 the taxpayer during the taxable year is the credit  
 18 amount determined under paragraph (2).

19 “(2) CREDIT AMOUNT.—

20 “(A) IN GENERAL.—The credit amount de-  
 21 termined under this paragraph shall be deter-  
 22 mined in accordance with the following tables:

23 “(i) In the case of a new qualified hy-  
 24 brid motor vehicle which is a passenger  
 25 automobile, medium duty passenger vehi-

1                   cle, or light truck and which provides the  
 2                   following percentage of the maximum  
 3                   available power:

**“If percentage of the maximum****available power is:****The credit amount is:**

|  |          |
|--|----------|
| At least 4 percent but less than 10 percent .....  | \$250    |
| At least 10 percent but less than 20 percent ..... | \$500    |
| At least 20 percent but less than 30 percent ..... | \$750    |
| At least 30 percent .....                          | \$1,000. |

4                   “(ii) In the case of a new qualified hy-  
 5                   brid motor vehicle which is a heavy duty  
 6                   hybrid motor vehicle and which provides  
 7                   the following percentage of the maximum  
 8                   available power:

9                   “(I) If such vehicle has a gross  
 10                  vehicle weight rating of not more than  
 11                  14,000 pounds:

**“If percentage of the maximum****available power is:****The credit amount is:**

|  |          |
|--|----------|
| At least 20 percent but less than 30 percent ..... | \$1,000  |
| At least 30 percent but less than 40 percent ..... | \$1,750  |
| At least 40 percent but less than 50 percent ..... | \$2,000  |
| At least 50 percent but less than 60 percent ..... | \$2,250  |
| At least 60 percent .....                          | \$2,500. |

12                  “(II) If such vehicle has a gross  
 13                  vehicle weight rating of more than  
 14                  14,000 but not more than 26,000  
 15                  pounds:

**“If percentage of the maximum****available power is:****The credit amount is:**

|  |          |
|--|----------|
| At least 20 percent but less than 30 percent ..... | \$4,000  |
| At least 30 percent but less than 40 percent ..... | \$4,500  |
| At least 40 percent but less than 50 percent ..... | \$5,000  |
| At least 50 percent but less than 60 percent ..... | \$5,500  |
| At least 60 percent .....                          | \$6,000. |

1 “(III) If such vehicle has a gross  
 2 vehicle weight rating of more than  
 3 26,000 pounds:

**“If percentage of the maximum**

**available power is:**

**The credit amount is:**

|  |           |
|--|-----------|
| At least 20 percent but less than 30 percent ..... | \$6,000   |
| At least 30 percent but less than 40 percent ..... | \$7,000   |
| At least 40 percent but less than 50 percent ..... | \$8,000   |
| At least 50 percent but less than 60 percent ..... | \$9,000   |
| At least 60 percent .....                          | \$10,000. |

4 “(B) INCREASE FOR FUEL EFFICIENCY.—

5 “(i) AMOUNT.—The amount deter-  
 6 mined under subparagraph (A)(i) with re-  
 7 spect to a new qualified hybrid motor vehi-  
 8 cle which is a passenger automobile or  
 9 light truck shall be increased by—

10 “(I) \$500, if such vehicle  
 11 achieves at least 125 percent but less  
 12 than 150 percent of the 2002 model  
 13 year city fuel economy,

14 “(II) \$1,000, if such vehicle  
 15 achieves at least 150 percent but less  
 16 than 175 percent of the 2002 model  
 17 year city fuel economy,

18 “(III) \$1,500, if such vehicle  
 19 achieves at least 175 percent but less  
 20 than 200 percent of the 2002 model  
 21 year city fuel economy,

1           “(IV) \$2,000, if such vehicle  
2           achieves at least 200 percent but less  
3           than 225 percent of the 2002 model  
4           year city fuel economy,

5           “(V) \$2,500, if such vehicle  
6           achieves at least 225 percent but less  
7           than 250 percent of the 2002 model  
8           year city fuel economy, and

9           “(VI) \$3,000, if such vehicle  
10          achieves at least 250 percent of the  
11          2002 model year city fuel economy.

12          “(ii) 2002 MODEL YEAR CITY FUEL  
13          ECONOMY.—For purposes of clause (i), the  
14          2002 model year city fuel economy with re-  
15          spect to a vehicle shall be determined on a  
16          gasoline gallon equivalent basis as deter-  
17          mined by the Administrator of the Envi-  
18          ronmental Protection Agency using the ta-  
19          bles provided in subsection (b)(2)(B) with  
20          respect to such vehicle.

21          “(C) INCREASE FOR ACCELERATED EMIS-  
22          SIONS PERFORMANCE.—The amount deter-  
23          mined under subparagraph (A)(ii) with respect  
24          to an applicable heavy duty hybrid motor vehi-  
25          cle shall be increased by the increased credit

1 amount determined in accordance with the fol-  
 2 lowing tables:

3 “(i) In the case of a vehicle which has  
 4 a gross vehicle weight rating of not more  
 5 than 14,000 pounds:

| <b>“If the model year is:</b> | <b>The increased credit amount is:</b> |
|-------------------------------|--|
| 2004 .....                    | \$2,500                                |
| 2005 .....                    | \$2,000                                |
| 2006 .....                    | \$1,500.                               |

6 “(ii) In the case of a vehicle which  
 7 has a gross vehicle weight rating of more  
 8 than 14,000 pounds but not more than  
 9 26,000 pounds:

| <b>“If the model year is:</b> | <b>The increased credit amount is:</b> |
|-------------------------------|--|
| 2004 .....                    | \$6,500                                |
| 2005 .....                    | \$5,250                                |
| 2006 .....                    | \$4,000.                               |

10 “(iii) In the case of a vehicle which  
 11 has a gross vehicle weight rating of more  
 12 than 26,000 pounds:

| <b>“If the model year is:</b> | <b>The increased credit amount is:</b> |
|-------------------------------|--|
| 2004 .....                    | \$10,000                               |
| 2005 .....                    | \$8,000                                |
| 2006 .....                    | \$6,000.                               |

13 “(D) DEFINITIONS RELATING TO CREDIT  
 14 AMOUNT.—

15 “(i) APPLICABLE HEAVY DUTY HY-  
 16 BRID MOTOR VEHICLE.—For purposes of  
 17 subparagraph (C), the term ‘applicable  
 18 heavy duty hybrid motor vehicle’ means a  
 19 heavy duty hybrid motor vehicle which is

1 powered by an internal combustion or heat  
2 engine which is certified as meeting the  
3 emission standards set in the regulations  
4 prescribed by the Administrator of the En-  
5 vironmental Protection Agency for 2007  
6 and later model year diesel heavy duty en-  
7 gines, or for 2008 and later model year  
8 ottocycle heavy duty engines, as applicable.

9 “(ii) MAXIMUM AVAILABLE POWER.—

10 “(I) PASSENGER AUTOMOBILE,  
11 MEDIUM DUTY PASSENGER VEHICLE,  
12 OR LIGHT TRUCK.—For purposes of  
13 subparagraph (A)(i), the term ‘max-  
14 imum available power’ means the  
15 maximum power available from the re-  
16 chargeable energy storage system,  
17 during a standard 10 second pulse  
18 power or equivalent test, divided by  
19 such maximum power and the SAE  
20 net power of the heat engine.

21 “(II) HEAVY DUTY HYBRID  
22 MOTOR VEHICLE.—For purposes of  
23 subparagraph (A)(ii), the term ‘max-  
24 imum available power’ means the  
25 maximum power available from the re-

1 chargeable energy storage system,  
2 during a standard 10 second pulse  
3 power or equivalent test, divided by  
4 the vehicle's total traction power. The  
5 term 'total traction power' means the  
6 sum of the peak power from the re-  
7 chargeable energy storage system and  
8 the heat engine peak power of the ve-  
9 hicle, except that if such storage sys-  
10 tem is the sole means by which the ve-  
11 hicle can be driven, the total traction  
12 power is the peak power of such stor-  
13 age system.

14 “(3) NEW QUALIFIED HYBRID MOTOR VEHI-  
15 CLE.—For purposes of this subsection—

16 “(A) IN GENERAL.—The term ‘new quali-  
17 fied hybrid motor vehicle’ means a motor vehi-  
18 cle—

19 “(i) which draws propulsion energy  
20 from onboard sources of stored energy  
21 which are both—

22 “(I) an internal combustion or  
23 heat engine using consumable fuel,  
24 and



1                   “(II) a rechargeable energy stor-  
2                   age system,

3                   “(ii) which, in the case of a passenger  
4                   automobile, medium duty passenger vehi-  
5                   cle, or light truck—

6                   “(I) for 2002 and later model ve-  
7                   hicles, has received a certificate of  
8                   conformity under the Clean Air Act  
9                   and meets or exceeds the equivalent  
10                  qualifying California low emission ve-  
11                  hicle standard under section 243(e)(2)  
12                  of the Clean Air Act for that make  
13                  and model year, and

14                  “(II) for 2004 and later model  
15                  vehicles, has received a certificate that  
16                  such vehicle meets or exceeds the Bin  
17                  5 Tier II emission level established in  
18                  regulations prescribed by the Adminis-  
19                  trator of the Environmental Protec-  
20                  tion Agency under section 202(i) of  
21                  the Clean Air Act for that make and  
22                  model year vehicle,

23                  “(iii) which, in the case of a heavy  
24                  duty hybrid motor vehicle, has an internal  
25                  combustion or heat engine which has re-

1           ceived a certificate of conformity under the  
2           Clean Air Act as meeting the emission  
3           standards set in the regulations prescribed  
4           by the Administrator of the Environmental  
5           Protection Agency for 2004 through 2007  
6           model year diesel heavy duty engines or  
7           ottocycle heavy duty engines, as applicable,

8           “(iv) the original use of which com-  
9           mences with the taxpayer,

10           “(v) which is acquired for use or lease  
11           by the taxpayer and not for resale, and

12           “(vi) which is made by a manufac-  
13           turer.

14           “(B) CONSUMABLE FUEL.—For purposes  
15           of subparagraph (A)(i)(I), the term ‘consumable  
16           fuel’ means any solid, liquid, or gaseous matter  
17           which releases energy when consumed by an  
18           auxiliary power unit.

19           “(4) HEAVY DUTY HYBRID MOTOR VEHICLE.—  
20           For purposes of this subsection, the term ‘heavy  
21           duty hybrid motor vehicle’ means a new qualified hy-  
22           brid motor vehicle which has a gross vehicle weight  
23           rating of more than 8,500 pounds. Such term does  
24           not include a medium duty passenger vehicle.

1       “(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR  
2 VEHICLE CREDIT.—

3               “(1) ALLOWANCE OF CREDIT.—Except as pro-  
4 vided in paragraph (5), the new qualified alternative  
5 fuel motor vehicle credit determined under this sub-  
6 section is an amount equal to the applicable percent-  
7 age of the incremental cost of any new qualified al-  
8 ternative fuel motor vehicle placed in service by the  
9 taxpayer during the taxable year.

10              “(2) APPLICABLE PERCENTAGE.—For purposes  
11 of paragraph (1), the applicable percentage with re-  
12 spect to any new qualified alternative fuel motor ve-  
13 hicle is—

14                      “(A) 40 percent, plus

15                      “(B) 30 percent, if such vehicle—

16                              “(i) has received a certificate of con-  
17 formity under the Clean Air Act and meets  
18 or exceeds the most stringent standard  
19 available for certification under the Clean  
20 Air Act for that make and model year vehi-  
21 cle (other than a zero emission standard),  
22 or

23                              “(ii) has received an order certifying  
24 the vehicle as meeting the same require-  
25 ments as vehicles which may be sold or

1           leased in California and meets or exceeds  
2           the most stringent standard available for  
3           certification under the State laws of Cali-  
4           fornia (enacted in accordance with a waiv-  
5           er granted under section 209(b) of the  
6           Clean Air Act) for that make and model  
7           year vehicle (other than a zero emission  
8           standard).

9           For purposes of the preceding sentence, in the case  
10          of any new qualified alternative fuel motor vehicle  
11          which weighs more than 14,000 pounds gross vehicle  
12          weight rating, the most stringent standard available  
13          shall be such standard available for certification on  
14          the date of the enactment of the Energy Tax Incen-  
15          tives Act.

16               “(3) INCREMENTAL COST.—For purposes of  
17          this subsection, the incremental cost of any new  
18          qualified alternative fuel motor vehicle is equal to  
19          the amount of the excess of the manufacturer’s sug-  
20          gested retail price for such vehicle over such price  
21          for a gasoline or diesel fuel motor vehicle of the  
22          same model, to the extent such amount does not ex-  
23          ceed—

1           “(A) \$5,000, if such vehicle has a gross ve-  
2           hicle weight rating of not more than 8,500  
3           pounds,

4           “(B) \$10,000, if such vehicle has a gross  
5           vehicle weight rating of more than 8,500  
6           pounds but not more than 14,000 pounds,

7           “(C) \$25,000, if such vehicle has a gross  
8           vehicle weight rating of more than 14,000  
9           pounds but not more than 26,000 pounds, and

10          “(D) \$40,000, if such vehicle has a gross  
11          vehicle weight rating of more than 26,000  
12          pounds.

13          “(4) NEW QUALIFIED ALTERNATIVE FUEL  
14          MOTOR VEHICLE.—For purposes of this sub-  
15          section—

16               “(A) IN GENERAL.—The term ‘new quali-  
17               fied alternative fuel motor vehicle’ means any  
18               motor vehicle—

19                       “(i) which is only capable of operating  
20                       on an alternative fuel,

21                       “(ii) the original use of which com-  
22                       mences with the taxpayer,

23                       “(iii) which is acquired by the tax-  
24                       payer for use or lease, but not for resale,  
25                       and

1                   “(iv) which is made by a manufac-  
2                   turer.

3                   “(B) ALTERNATIVE FUEL.—The term ‘al-  
4                   ternative fuel’ means compressed natural gas,  
5                   liquefied natural gas, liquefied petroleum gas,  
6                   hydrogen, and any liquid at least 85 percent of  
7                   the volume of which consists of methanol.

8                   “(5) CREDIT FOR MIXED-FUEL VEHICLES.—

9                   “(A) IN GENERAL.—In the case of a  
10                  mixed-fuel vehicle placed in service by the tax-  
11                  payer during the taxable year, the credit deter-  
12                  mined under this subsection is an amount equal  
13                  to—

14                 “(i) in the case of a 75/25 mixed-fuel  
15                 vehicle, 70 percent of the credit which  
16                 would have been allowed under this sub-  
17                 section if such vehicle was a qualified alter-  
18                 native fuel motor vehicle, and

19                 “(ii) in the case of a 90/10 mixed-fuel  
20                 vehicle, 90 percent of the credit which  
21                 would have been allowed under this sub-  
22                 section if such vehicle was a qualified alter-  
23                 native fuel motor vehicle.

24                 “(B) MIXED-FUEL VEHICLE.—For pur-  
25                 poses of this subsection, the term ‘mixed-fuel

1           vehicle’ means any motor vehicle described in  
2           subparagraph (C) or (D) of paragraph (3),  
3           which—

4                   “(i) is certified by the manufacturer  
5                   as being able to perform efficiently in nor-  
6                   mal operation on a combination of an al-  
7                   ternative fuel and a petroleum-based fuel,

8                   “(ii) either—

9                           “(I) has received a certificate of  
10                          conformity under the Clean Air Act,  
11                          or

12                           “(II) has received an order certi-  
13                          fying the vehicle as meeting the same  
14                          requirements as vehicles which may be  
15                          sold or leased in California and meets  
16                          or exceeds the low emission vehicle  
17                          standard under section 88.105–94 of  
18                          title 40, Code of Federal Regulations,  
19                          for that make and model year vehicle,

20                   “(iii) the original use of which com-  
21                   mences with the taxpayer,

22                   “(iv) which is acquired by the tax-  
23                   payer for use or lease, but not for resale,  
24                   and

1                   “(v) which is made by a manufac-  
2                   turer.

3                   “(C) 75/25 MIXED-FUEL VEHICLE.—For  
4                   purposes of this subsection, the term ‘75/25  
5                   mixed-fuel vehicle’ means a mixed-fuel vehicle  
6                   which operates using at least 75 percent alter-  
7                   native fuel and not more than 25 percent petro-  
8                   leum-based fuel.

9                   “(D) 90/10 MIXED-FUEL VEHICLE.—For  
10                  purposes of this subsection, the term ‘90/10  
11                  mixed-fuel vehicle’ means a mixed-fuel vehicle  
12                  which operates using at least 90 percent alter-  
13                  native fuel and not more than 10 percent petro-  
14                  leum-based fuel.

15               “(e) APPLICATION WITH OTHER CREDITS.—The  
16               credit allowed under subsection (a) for any taxable year  
17               shall not exceed the excess (if any) of—

18               “(1) the regular tax for the taxable year re-  
19               duced by the sum of the credits allowable under sub-  
20               part A and sections 27, 29, and 30, over

21               “(2) the tentative minimum tax for the taxable  
22               year.

23               “(f) OTHER DEFINITIONS AND SPECIAL RULES.—  
24               For purposes of this section—



1           “(1) MOTOR VEHICLE.—The term ‘motor vehi-  
2           cle’ has the meaning given such term by section  
3           30(c)(2).

4           “(2) CITY FUEL ECONOMY.—The city fuel econ-  
5           omy with respect to any vehicle shall be measured in  
6           a manner which is substantially similar to the man-  
7           ner city fuel economy is measured in accordance  
8           with procedures under part 600 of subchapter Q of  
9           chapter I of title 40, Code of Federal Regulations,  
10          as in effect on the date of the enactment of this sec-  
11          tion.

12          “(3) OTHER TERMS.—The terms ‘automobile’,  
13          ‘passenger automobile’, ‘medium duty passenger ve-  
14          hicle’, ‘light truck’, and ‘manufacturer’ have the  
15          meanings given such terms in regulations prescribed  
16          by the Administrator of the Environmental Protec-  
17          tion Agency for purposes of the administration of  
18          title II of the Clean Air Act (42 U.S.C. 7521 et  
19          seq.).

20          “(4) REDUCTION IN BASIS.—For purposes of  
21          this subtitle, the basis of any property for which a  
22          credit is allowable under subsection (a) shall be re-  
23          duced by the amount of such credit so allowed (de-  
24          termined without regard to subsection (e)).

1           “(5) NO DOUBLE BENEFIT.—The amount of  
2           any deduction or other credit allowable under this  
3           chapter—

4                   “(A) for any incremental cost taken into  
5           account in computing the amount of the credit  
6           determined under subsection (d) shall be re-  
7           duced by the amount of such credit attributable  
8           to such cost, and

9                   “(B) with respect to a vehicle described  
10          under subsection (b) or (c), shall be reduced by  
11          the amount of credit allowed under subsection  
12          (a) for such vehicle for the taxable year.

13          “(6) PROPERTY USED BY TAX-EXEMPT ENTI-  
14          TIES.—In the case of a credit amount which is al-  
15          lowable with respect to a motor vehicle which is ac-  
16          quired by an entity exempt from tax under this  
17          chapter, the person which sells or leases such vehicle  
18          to the entity shall be treated as the taxpayer with  
19          respect to the vehicle for purposes of this section  
20          and the credit shall be allowed to such person, but  
21          only if the person clearly discloses to the entity at  
22          the time of any sale or lease the specific amount of  
23          any credit otherwise allowable to the entity under  
24          this section.

1           “(7) RECAPTURE.—The Secretary shall, by reg-  
2           ulations, provide for recapturing the benefit of any  
3           credit allowable under subsection (a) with respect to  
4           any property which ceases to be property eligible for  
5           such credit (including recapture in the case of a  
6           lease period of less than the economic life of a vehi-  
7           cle).

8           “(8) PROPERTY USED OUTSIDE UNITED  
9           STATES, ETC., NOT QUALIFIED.—No credit shall be  
10          allowed under subsection (a) with respect to any  
11          property referred to in section 50(b) or with respect  
12          to the portion of the cost of any property taken into  
13          account under section 179.

14          “(9) ELECTION TO NOT TAKE CREDIT.—No  
15          credit shall be allowed under subsection (a) for any  
16          vehicle if the taxpayer elects to not have this section  
17          apply to such vehicle.

18          “(10) CARRYBACK AND CARRYFORWARD AL-  
19          LOWED.—

20                 “(A) IN GENERAL.—If the credit allowable  
21                 under subsection (a) for a taxable year exceeds  
22                 the amount of the limitation under subsection  
23                 (e) for such taxable year (in this paragraph re-  
24                 ferred to as the ‘unused credit year’), such ex-  
25                 cess shall be a credit carryback to each of the

1           3 taxable years preceding the unused credit  
 2           year and a credit carryforward to each of the  
 3           20 taxable years following the unused credit  
 4           year, except that no excess may be carried to a  
 5           taxable year beginning before January 1, 2005.

6           “(B) RULES.—Rules similar to the rules of  
 7           section 39 shall apply with respect to the credit  
 8           carryback and credit carryforward under sub-  
 9           paragraph (A).

10          “(11) INTERACTION WITH AIR QUALITY AND  
 11          MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-  
 12          erwise provided in this section, a motor vehicle shall  
 13          not be considered eligible for a credit under this sec-  
 14          tion unless such vehicle is in compliance with—

15               “(A) the applicable provisions of the Clean  
 16               Air Act for the applicable make and model year  
 17               of the vehicle (or applicable air quality provi-  
 18               sions of State law in the case of a State which  
 19               has adopted such provision under a waiver  
 20               under section 209(b) of the Clean Air Act), and

21               “(B) the motor vehicle safety provisions of  
 22               sections 30101 through 30169 of title 49,  
 23               United States Code.

24          “(g) REGULATIONS.—

1           “(1) IN GENERAL.—Except as provided in para-  
 2           graph (2), the Secretary shall promulgate such regu-  
 3           lations as necessary to carry out the provisions of  
 4           this section.

5           “(2) COORDINATION IN PRESCRIPTION OF CER-  
 6           TAIN REGULATIONS.—The Secretary of the Treas-  
 7           ury, in coordination with the Secretary of Transpor-  
 8           tation and the Administrator of the Environmental  
 9           Protection Agency, shall prescribe such regulations  
 10          as necessary to determine whether a motor vehicle  
 11          meets the requirements to be eligible for a credit  
 12          under this section.

13          “(h) TERMINATION.—This section shall not apply to  
 14          any property purchased after—

15                 “(1) in the case of a new qualified fuel cell  
 16                 motor vehicle (as described in subsection (b)), De-  
 17                 cember 31, 2011, and

18                 “(2) in the case of any other property, Decem-  
 19                 ber 31, 2006.”.

20          (b) CONFORMING AMENDMENTS.—

21                 (1) Section 1016(a) is amended by striking  
 22                 “and” at the end of paragraph (31), by striking the  
 23                 period at the end of paragraph (32) and inserting “,  
 24                 and”, and by adding at the end the following new  
 25                 paragraph:

1 “(33) to the extent provided in section  
2 30C(f)(4).”.

3 (2) Section 55(c)(2), as amended by this Act, is  
4 amended by inserting “30C(e),” after “30(b)(2),”.

5 (3) Section 6501(m) is amended by inserting  
6 “30C(f)(9),” after “30(d)(4),”.

7 (4) The table of sections for subpart B of part  
8 IV of subchapter A of chapter 1, as amended by this  
9 Act, is amended by inserting after the item relating  
10 to section 30B the following new item:

“Sec. 30C. Alternative motor vehicle credit.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to property placed in service after  
13 December 31, 2004, in taxable years ending after such  
14 date.

15 **SEC. 812. MODIFICATION OF CREDIT FOR QUALIFIED ELEC-**  
16 **TRIC VEHICLES.**

17 (a) AMOUNT OF CREDIT.—

18 (1) IN GENERAL.—Section 30(a) (relating to al-  
19 lowance of credit) is amended by striking “10 per-  
20 cent of”.

21 (2) LIMITATION OF CREDIT ACCORDING TO  
22 TYPE OF VEHICLE.—Paragraph (1) of section 30(b)  
23 (relating to limitations) is amended to read as fol-  
24 lows:

1           “(1) LIMITATION ACCORDING TO TYPE OF VE-  
2           HICLE.—The amount of the credit allowed under  
3           subsection (a) for any vehicle shall not exceed the  
4           greatest of the following amounts applicable to such  
5           vehicle:

6                   “(A) In the case of a vehicle with a gross  
7           vehicle weight rating not exceeding 8,500  
8           pounds—

9                           “(i) except as provided in clause (ii)  
10                           or (iii), \$3,500,

11                           “(ii) \$6,000, if such vehicle is—

12                                   “(I) capable of a driving range of  
13                                   at least 100 miles on a single charge  
14                                   of the vehicle’s rechargeable batteries  
15                                   as measured pursuant to the urban  
16                                   dynamometer schedules under appen-  
17                                   dix I to part 86 of title 40, Code of  
18                                   Federal Regulations, or

19                                   “(II) capable of a payload capac-  
20                                   ity of at least 1,000 pounds, and

21                                   “(iii) if such vehicle is a low-speed ve-  
22                                   hicle which conforms to Standard 500 pre-  
23                                   scribed by the Secretary of Transportation  
24                                   (49 C.F.R. 571.500), as in effect on the

1 date of the enactment of the Energy Tax  
2 Incentives Act, the lesser of—

3 “(I) 10 percent of the manufac-  
4 turer’s suggested retail price of the  
5 vehicle, or

6 “(II) \$1,500.

7 “(B) In the case of a vehicle with a gross  
8 vehicle weight rating exceeding 8,500 but not  
9 exceeding 14,000 pounds, \$10,000.

10 “(C) In the case of a vehicle with a gross  
11 vehicle weight rating exceeding 14,000 but not  
12 exceeding 26,000 pounds, \$20,000.

13 “(D) In the case of a vehicle with a gross  
14 vehicle weight rating exceeding 26,000 pounds,  
15 \$40,000.”.

16 (b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

17 (1) IN GENERAL.—Section 30(c)(1)(A) (defin-  
18 ing qualified electric vehicle) is amended to read as  
19 follows:

20 “(A) which is—

21 “(i) operated solely by use of a bat-  
22 tery or battery pack, or

23 “(ii) powered primarily through the  
24 use of an electric battery or battery pack  
25 using a flywheel or capacitor which stores



1 energy produced by an electric motor  
 2 through regenerative braking to assist in  
 3 vehicle operation,”.

4 (2) LEASED VEHICLES.—Section 30(c)(1)(C) is  
 5 amended by inserting “or lease” after “use”.

6 (3) CONFORMING AMENDMENTS.—

7 (A) Subsections (a), (b)(2), and (c) of sec-  
 8 tion 30 are each amended by inserting “bat-  
 9 tery” after “qualified” each place it appears.

10 (B) The heading of subsection (c) of sec-  
 11 tion 30 is amended by inserting “BATTERY”  
 12 after “QUALIFIED”.

13 (C) The heading of section 30 is amended  
 14 by inserting “**BATTERY**” after “**QUALIFIED**”.

15 (D) The item relating to section 30 in the  
 16 table of sections for subpart B of part IV of  
 17 subchapter A of chapter 1 is amended by in-  
 18 serting “battery” after “qualified”.

19 (E) Section 179A(c)(3) is amended by in-  
 20 serting “battery” before “electric”.

21 (F) The heading of paragraph (3) of sec-  
 22 tion 179A(c) is amended by inserting “BAT-  
 23 TERY” before “ELECTRIC”.

1       (c) ADDITIONAL SPECIAL RULES.—Section 30(d)  
2 (relating to special rules) is amended by adding at the end  
3 the following new paragraphs:

4           “(5) NO DOUBLE BENEFIT.—The amount of  
5 any deduction or other credit allowable under this  
6 chapter for any cost taken into account in com-  
7 puting the amount of the credit determined under  
8 subsection (a) shall be reduced by the amount of  
9 such credit attributable to such cost.

10          “(6) PROPERTY USED BY TAX-EXEMPT ENTI-  
11 TIES.—In the case of a credit amount which is al-  
12 lowable with respect to a vehicle which is acquired  
13 by an entity exempt from tax under this chapter, the  
14 person which sells or leases such vehicle to the entity  
15 shall be treated as the taxpayer with respect to the  
16 vehicle for purposes of this section and the credit  
17 shall be allowed to such person, but only if the per-  
18 son clearly discloses to the entity at the time of any  
19 sale or lease the specific amount of any credit other-  
20 wise allowable to the entity under this section.

21          “(7) CARRYBACK AND CARRYFORWARD AL-  
22 LOWED.—

23           “(A) IN GENERAL.—If the credit allowable  
24 under subsection (a) for a taxable year exceeds  
25 the amount of the limitation under subsection

1 (b)(2) for such taxable year (in this paragraph  
 2 referred to as the ‘unused credit year’), such  
 3 excess shall be a credit carryback to each of the  
 4 3 taxable years preceding the unused credit  
 5 year and a credit carryforward to each of the  
 6 20 taxable years following the unused credit  
 7 year, except that no excess may be carried to a  
 8 taxable year beginning before January 1, 2005.

9 “(B) RULES.—Rules similar to the rules of  
 10 section 39 shall apply with respect to the credit  
 11 carryback and credit carryforward under sub-  
 12 paragraph (A).”.

13 (d) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to property placed in service after  
 15 December 31, 2004, in taxable years ending after such  
 16 date.

17 **SEC. 813. CREDIT FOR INSTALLATION OF ALTERNATIVE**  
 18 **FUELING STATIONS.**

19 (a) IN GENERAL.—Subpart B of part IV of sub-  
 20 chapter A of chapter 1 (relating to foreign tax credit, etc.),  
 21 as amended by this Act, is amended by adding at the end  
 22 the following new section:

1 **“SEC. 30D. CLEAN-FUEL VEHICLE REFUELING PROPERTY**  
 2 **CREDIT.**

3 “(a) CREDIT ALLOWED.—There shall be allowed as  
 4 a credit against the tax imposed by this chapter for the  
 5 taxable year an amount equal to 50 percent of the amount  
 6 paid or incurred by the taxpayer during the taxable year  
 7 for the installation of qualified clean-fuel vehicle refueling  
 8 property.

9 “(b) LIMITATION.—The credit allowed under sub-  
 10 section (a)—

11 “(1) with respect to any retail clean-fuel vehicle  
 12 refueling property, shall not exceed \$30,000, and

13 “(2) with respect to any residential clean-fuel  
 14 vehicle refueling property, shall not exceed \$1,000.

15 “(c) YEAR CREDIT ALLOWED.—Notwithstanding  
 16 subsection (a), no credit shall be allowed under subsection  
 17 (a) with respect to any qualified clean-fuel vehicle refuel-  
 18 ing property before the taxable year in which the property  
 19 is placed in service by the taxpayer.

20 “(d) DEFINITIONS.—For purposes of this section—

21 “(1) QUALIFIED CLEAN-FUEL VEHICLE RE-  
 22 FUELING PROPERTY.—The term ‘qualified clean-fuel  
 23 vehicle refueling property’ has the same meaning  
 24 given such term by section 179A(d).

25 “(2) RESIDENTIAL CLEAN-FUEL VEHICLE RE-  
 26 FUELING PROPERTY.—The term ‘residential clean-

1 fuel vehicle refueling property’ means qualified  
 2 clean-fuel vehicle refueling property which is in-  
 3 stalled on property which is used as the principal  
 4 residence (within the meaning of section 121) of the  
 5 taxpayer.

6 “(3) RETAIL CLEAN-FUEL VEHICLE REFUELING  
 7 PROPERTY.—The term ‘retail clean-fuel vehicle re-  
 8 fueling property’ means qualified clean-fuel vehicle  
 9 refueling property which is installed on property  
 10 (other than property described in paragraph (2))  
 11 used in a trade or business of the taxpayer.

12 “(e) APPLICATION WITH OTHER CREDITS.—The  
 13 credit allowed under subsection (a) for any taxable year  
 14 shall not exceed the excess (if any) of—

15 “(1) the regular tax for the taxable year re-  
 16 duced by the sum of the credits allowable under sub-  
 17 part A and sections 27, 29, 30, and 30C, over

18 “(2) the tentative minimum tax for the taxable  
 19 year.

20 “(f) BASIS REDUCTION.—For purposes of this title,  
 21 the basis of any property shall be reduced by the portion  
 22 of the cost of such property taken into account under sub-  
 23 section (a).

24 “(g) NO DOUBLE BENEFIT.—

1           “(1) COORDINATION WITH OTHER DEDUCTIONS  
2           AND CREDITS.—Except as provided in paragraph  
3           (2), the amount of any deduction or other credit al-  
4           lowable under this chapter for any cost taken into  
5           account in computing the amount of the credit de-  
6           termined under subsection (a) shall be reduced by  
7           the amount of such credit attributable to such cost.

8           “(2) NO DEDUCTION ALLOWED UNDER SECTION  
9           179A.—No deduction shall be allowed under section  
10          179A with respect to any property with respect to  
11          which a credit is allowed under subsection (a).

12          “(h) REFUELING PROPERTY INSTALLED FOR TAX-  
13          EXEMPT ENTITIES.—In the case of qualified clean-fuel ve-  
14          hicle refueling property installed on property owned or  
15          used by an entity exempt from tax under this chapter, the  
16          person which installs such refueling property for the entity  
17          shall be treated as the taxpayer with respect to the refuel-  
18          ing property for purposes of this section (and such refuel-  
19          ing property shall be treated as retail clean-fuel vehicle  
20          refueling property) and the credit shall be allowed to such  
21          person, but only if the person clearly discloses to the entity  
22          in any installation contract the specific amount of the  
23          credit allowable under this section.

24          “(i) CARRYFORWARD ALLOWED.—

1           “(1) IN GENERAL.—If the credit allowable  
 2           under subsection (a) for a taxable year exceeds the  
 3           amount of the limitation under subsection (e) for  
 4           such taxable year, such excess shall be a credit  
 5           carryforward to each of the 20 taxable years fol-  
 6           lowing such taxable year.

7           “(2) RULES.—Rules similar to the rules of sec-  
 8           tion 39 shall apply with respect to the credit  
 9           carryforward under paragraph (1).

10          “(j) SPECIAL RULES.—Rules similar to the rules of  
 11         paragraphs (4) and (5) of section 179A(e) shall apply.

12          “(k) REGULATIONS.—The Secretary shall prescribe  
 13         such regulations as necessary to carry out the provisions  
 14         of this section.

15          “(l) TERMINATION.—This section shall not apply to  
 16         any property placed in service—

17                 “(1) in the case of property relating to hydro-  
 18                 gen, after December 31, 2011, and

19                 “(2) in the case of any other property, after  
 20                 December 31, 2007.”.

21         (b) MODIFICATIONS TO EXTENSION OF DEDUCTION  
 22         FOR CERTAIN REFUELING PROPERTY.—Subsection (f) of  
 23         section 179A is amended to read as follows:

24                 “(f) TERMINATION.—This section shall not apply to  
 25         any property placed in service—

1           “(1) in the case of property relating to hydro-  
2           gen, after December 31, 2011, and

3           “(2) in the case of any other property, after  
4           December 31, 2007.”.

5           (c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT  
6           QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROP-  
7           ERTY.—Section 179A(d) (defining qualified clean-fuel ve-  
8           hicle refueling property) is amended by adding at the end  
9           the following new flush sentence:

10          “In the case of clean-burning fuel which is hydrogen pro-  
11          duced from another clean-burning fuel, paragraph (3)(A)  
12          shall be applied by substituting ‘production, storage, or  
13          dispensing’ for ‘storage or dispensing’ both places it ap-  
14          pears.”.

15          (d) CONFORMING AMENDMENTS.—

16               (1) Section 1016(a), as amended by this Act, is  
17               amended by striking “and” at the end of paragraph  
18               (32), by striking the period at the end of paragraph  
19               (33) and inserting “, and”, and by adding at the  
20               end the following new paragraph:

21               “(34) to the extent provided in section  
22               30D(f).”.

23               (2) Section 55(c)(2), as amended by this Act, is  
24               amended by inserting “30D(e),” after “30C(e),”.



1           (3) The table of sections for subpart B of part  
 2           IV of subchapter A of chapter 1, as amended by this  
 3           Act, is amended by inserting after the item relating  
 4           to section 30C the following new item:

“Sec. 30D. Clean-fuel vehicle refueling property credit.”.

5           (e) EFFECTIVE DATE.—The amendments made by  
 6           this section shall apply to property placed in service after  
 7           December 31, 2004, in taxable years ending after such  
 8           date.

9           **SEC. 814. CREDIT FOR RETAIL SALE OF ALTERNATIVE**  
 10           **FUELS AS MOTOR VEHICLE FUEL.**

11          (a) IN GENERAL.—Subpart D of part IV of sub-  
 12          chapter A of chapter 1 (relating to business related cred-  
 13          its) is amended by inserting after section 40 the following  
 14          new section:

15          **“SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE**  
 16          **FUELS AS MOTOR VEHICLE FUEL.**

17          “(a) GENERAL RULE.—For purposes of section 38,  
 18          the alternative fuel retail sales credit for any taxable year  
 19          is the applicable amount for each gasoline gallon equiva-  
 20          lent of alternative fuel sold at retail by the taxpayer during  
 21          such year as a fuel to propel any qualified motor vehicle.

22          “(b) DEFINITIONS.—For purposes of this section—

23                  “(1) APPLICABLE AMOUNT.—The term ‘applica-  
 24                  ble amount’ means the amount determined in ac-  
 25                  cordance with the following table:

**“In the case of any taxable year  
ending in—**

**The applicable amount is—**

2005 and 2006 ..... 50 cents.

1           “(2) ALTERNATIVE FUEL.—The term ‘alter-  
2       native fuel’ means compressed natural gas, liquefied  
3       natural gas, liquefied petroleum gas, hydrogen, or  
4       any liquid at least 85 percent of the volume of which  
5       consists of methanol or ethanol.

6           “(3) GASOLINE GALLON EQUIVALENT.—The  
7       term ‘gasoline gallon equivalent’ means, with respect  
8       to any alternative fuel, the amount (determined by  
9       the Secretary) of such fuel having a Btu content of  
10      114,000.

11          “(4) QUALIFIED MOTOR VEHICLE.—The term  
12      ‘qualified motor vehicle’ means any motor vehicle (as  
13      defined in section 30(c)(2)) which meets any appli-  
14      cable Federal or State emissions standards with re-  
15      spect to each fuel by which such vehicle is designed  
16      to be propelled.

17          “(5) SOLD AT RETAIL.—

18               “(A) IN GENERAL.—The term ‘sold at re-  
19      tail’ means the sale, for a purpose other than  
20      resale, after manufacture, production, or impor-  
21      tation.

22               “(B) USE TREATED AS SALE.—If any per-  
23      son uses alternative fuel (including any use  
24      after importation) as a fuel to propel any new

1           qualified alternative fuel motor vehicle (as de-  
2           fined in section 30C(d)(4)) before such fuel is  
3           sold at retail, then such use shall be treated in  
4           the same manner as if such fuel were sold at  
5           retail as a fuel to propel such a vehicle by such  
6           person.

7           “(c) NO DOUBLE BENEFIT.—The amount of any de-  
8           duction or other credit allowable under this chapter for  
9           any fuel taken into account in computing the amount of  
10          the credit determined under subsection (a) shall be re-  
11          duced by the amount of such credit attributable to such  
12          fuel.

13          “(d) PASS-THRU IN THE CASE OF ESTATES AND  
14          TRUSTS.—Under regulations prescribed by the Secretary,  
15          rules similar to the rules of subsection (d) of section 52  
16          shall apply.

17          “(e) TERMINATION.—This section shall not apply to  
18          any fuel sold at retail after December 31, 2006.”.

19          (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
20          tion 38(b) (relating to current year business credit) is  
21          amended by striking “plus” at the end of paragraph (20),  
22          by striking the period at the end of paragraph (21) and  
23          inserting “, plus”, and by adding at the end the following  
24          new paragraph:

1           “(22) the alternative fuel retail sales credit de-  
2           termined under section 40A(a).”.

3           (c) LIMITATION ON CARRYBACK.—

4           (1) IN GENERAL.—Subsection (d) of section 39,  
5           as amended by this Act, is amended to read as fol-  
6           lows:

7           “(d) TRANSITIONAL RULE.—No portion of the un-  
8           used business credit for any taxable year which is attrib-  
9           utable to a credit specified in section 38(b) may be carried  
10          back to any taxable year before the first taxable year for  
11          which such specified credit is allowable.”.

12          (2) EFFECTIVE DATE.—The amendment made  
13          by paragraph (1) shall apply with respect to taxable  
14          years beginning after December 31, 2003.

15          (d) CLERICAL AMENDMENT.—The table of sections  
16          for subpart D of part IV of subchapter A of chapter 1  
17          is amended by inserting after the item relating to section  
18          40 the following new item:

            “Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.”.

19          (e) EFFECTIVE DATE.—Except as otherwise pro-  
20          vided, the amendments made by this section shall apply  
21          to fuel sold at retail after December 31, 2004, in taxable  
22          years ending after such date.

23       **SEC. 815. SMALL ETHANOL PRODUCER CREDIT.**

24          (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO  
25          PATRONS OF A COOPERATIVE.—Section 40(g) (relating to

1 definitions and special rules for eligible small ethanol pro-  
 2 ducer credit) is amended by adding at the end the fol-  
 3 lowing new paragraph:

4           “(6) ALLOCATION OF SMALL ETHANOL PRO-  
 5           DUCER CREDIT TO PATRONS OF COOPERATIVE.—

6           “(A) ELECTION TO ALLOCATE.—

7                   “(i) IN GENERAL.—In the case of a  
 8           cooperative organization described in sec-  
 9           tion 1381(a), any portion of the credit de-  
 10          termined under subsection (a)(3) for the  
 11          taxable year may, at the election of the or-  
 12          ganization, be apportioned pro rata among  
 13          patrons of the organization on the basis of  
 14          the quantity or value of business done with  
 15          or for such patrons for the taxable year.

16                   “(ii) FORM AND EFFECT OF ELEC-  
 17          TION.—An election under clause (i) for any  
 18          taxable year shall be made on a timely  
 19          filed return for such year. Such election,  
 20          once made, shall be irrevocable for such  
 21          taxable year.

22           “(B) TREATMENT OF ORGANIZATIONS AND  
 23          PATRONS.—The amount of the credit appor-  
 24          tioned to patrons under subparagraph (A)—

1           “(i) shall not be included in the  
2           amount determined under subsection (a)  
3           with respect to the organization for the  
4           taxable year, and

5           “(ii) shall be included in the amount  
6           determined under subsection (a) for the  
7           taxable year of each patron for which the  
8           patronage dividends for the taxable year  
9           described in subparagraph (A) are included  
10          in gross income.

11          “(C) SPECIAL RULES FOR DECREASE IN  
12          CREDITS FOR TAXABLE YEAR.—If the amount  
13          of the credit of a cooperative organization de-  
14          termined under subsection (a)(3) for a taxable  
15          year is less than the amount of such credit  
16          shown on the return of the cooperative organi-  
17          zation for such year, an amount equal to the  
18          excess of—

19               “(i) such reduction, over

20               “(ii) the amount not apportioned to  
21               such patrons under subparagraph (A) for  
22               the taxable year,

23          shall be treated as an increase in tax imposed  
24          by this chapter on the organization. Such in-  
25          crease shall not be treated as tax imposed by

1           this chapter for purposes of determining the  
2           amount of any credit under this chapter or for  
3           purposes of section 55.”.

4           (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER  
5 CREDIT.—

6           (1) DEFINITION OF SMALL ETHANOL PRO-  
7 DUCER.—Section 40(g) (relating to definitions and  
8 special rules for eligible small ethanol producer cred-  
9 it) is amended by striking “30,000,000” each place  
10 it appears and inserting “60,000,000”.

11           (2) SMALL ETHANOL PRODUCER CREDIT NOT A  
12 PASSIVE ACTIVITY CREDIT.—Clause (i) of section  
13 469(d)(2)(A) is amended by striking “subpart D”  
14 and inserting “subpart D, other than section  
15 40(a)(3),”.

16           (3) SMALL ETHANOL PRODUCER CREDIT NOT  
17 ADDED BACK TO INCOME UNDER SECTION 87.—Sec-  
18 tion 87 (relating to income inclusion of alcohol fuel  
19 credit) is amended to read as follows:

20 **“SEC. 87. ALCOHOL FUEL CREDIT.**

21           “Gross income includes an amount equal to the sum  
22 of—

23           “(1) the amount of the alcohol mixture credit  
24 determined with respect to the taxpayer for the tax-  
25 able year under section 40(a)(1), and

1 “(2) the alcohol credit determined with respect  
 2 to the taxpayer for the taxable year under section  
 3 40(a)(2).”.

4 (c) CONFORMING AMENDMENT.—Section 1388 (re-  
 5 lating to definitions and special rules for cooperative orga-  
 6 nizations), as amended by this Act, is amended by adding  
 7 at the end the following new subsection:

8 “(1) CROSS REFERENCE.—For provisions relating to  
 9 the apportionment of the alcohol fuels credit between coop-  
 10 erative organizations and their patrons, see section  
 11 40(g)(6).”.

12 (d) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to taxable years ending after the  
 14 date of the enactment of this Act.

## 15 **Subtitle C—Conservation and** 16 **Energy Efficiency Provisions**

### 17 **SEC. 821. CREDIT FOR CONSTRUCTION OF NEW ENERGY EF-** 18 **FICIENT HOME.**

19 (a) IN GENERAL.—Subpart D of part IV of sub-  
 20 chapter A of chapter 1 (relating to business related cred-  
 21 its), as amended by this Act, is amended by adding at  
 22 the end the following new section:

#### 23 **“SEC. 45K. NEW ENERGY EFFICIENT HOME CREDIT.**

24 “(a) IN GENERAL.—For purposes of section 38, in  
 25 the case of an eligible contractor, the credit determined



1 under this section for the taxable year is an amount equal  
 2 to the aggregate adjusted bases of all energy efficient  
 3 property installed in a qualifying new home during con-  
 4 struction of such home.

5 “(b) LIMITATIONS.—

6 “(1) MAXIMUM CREDIT.—

7 “(A) IN GENERAL.—The credit allowed by  
 8 this section with respect to a qualifying new  
 9 home shall not exceed—

10 “(i) in the case of a 30-percent home,  
 11 \$1,000, and

12 “(ii) in the case of a 50-percent home,  
 13 \$2,000.

14 “(B) 30- OR 50-PERCENT HOME.—For pur-  
 15 poses of subparagraph (A)—

16 “(i) 30-PERCENT HOME.—The term  
 17 ‘30-percent home’ means—

18 “(I) a qualifying new home which  
 19 is certified to have a projected level of  
 20 annual heating and cooling energy  
 21 consumption, measured in terms of  
 22 average annual energy cost to the  
 23 homeowner, which is at least 30 per-  
 24 cent less than the annual level of  
 25 heating and cooling energy consump-

tion of a qualifying new home constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment, or

“(II) in the case of a qualifying new home which is a manufactured home, a home which meets the applicable standards required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

“(ii) 50-PERCENT HOME.—The term ‘50-percent home’ means a qualifying new home which would be described in clause (i)(I) if 50 percent were substituted for 30 percent.

“(C) PRIOR CREDIT AMOUNTS ON SAME HOME TAKEN INTO ACCOUNT.—The amount of the credit otherwise allowable for the taxable year with respect to a qualifying new home

1 under clause (i) or (ii) of subparagraph (A)  
2 shall be reduced by the sum of the credits al-  
3 lowed under subsection (a) to any taxpayer with  
4 respect to the home for all preceding taxable  
5 years.

6 “(2) COORDINATION WITH CERTAIN CREDITS.—

7 For purposes of this section—

8 “(A) the basis of any property referred to  
9 in subsection (a) shall be reduced by that por-  
10 tion of the basis of any property which is attrib-  
11 utable to the rehabilitation credit (as deter-  
12 mined under section 47(a)) or to the energy  
13 credit (as determined under section 48(a)), and

14 “(B) expenditures taken into account  
15 under section 25D, 47, or 48(a) shall not be  
16 taken into account under this section.

17 “(3) PROVIDER LIMITATION.—Any eligible con-  
18 tractor who directly or indirectly provides the guar-  
19 antee of energy savings under a guarantee-based  
20 method of certification described in subsection  
21 (d)(1)(D) shall not be eligible to receive the credit  
22 allowed by this section.

23 “(c) DEFINITIONS.—For purposes of this section—

24 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-  
25 ble contractor’ means—

1           “(A) the person who constructed the quali-  
2           fying new home, or

3           “(B) in the case of a qualifying new home  
4           which is a manufactured home, the manufac-  
5           tured home producer of such home.

6           If more than 1 person is described in subparagraph  
7           (A) or (B) with respect to any qualifying new home,  
8           such term means the person designated as such by  
9           the owner of such home.

10          “(2) ENERGY EFFICIENT PROPERTY.—The  
11          term ‘energy efficient property’ means any energy  
12          efficient building envelope component, and any en-  
13          ergy efficient heating or cooling equipment or system  
14          which can, individually or in combination with other  
15          components, meet the requirements of this section.

16          “(3) QUALIFYING NEW HOME.—

17               “(A) IN GENERAL.—The term ‘qualifying  
18               new home’ means a dwelling—

19                       “(i) located in the United States,

20                       “(ii) the construction of which is sub-  
21                       stantially completed after December 31,  
22                       2004, and

23                       “(iii) the first use of which after con-  
24                       struction is as a principal residence (within  
25                       the meaning of section 121).

1 “(B) MANUFACTURED HOME INCLUDED.—

2 The term ‘qualifying new home’ includes a  
3 manufactured home conforming to Federal  
4 Manufactured Home Construction and Safety  
5 Standards (24 C.F.R. 3280).

6 “(4) CONSTRUCTION.—The term ‘construction’  
7 includes reconstruction and rehabilitation.

8 “(5) BUILDING ENVELOPE COMPONENT.—The  
9 term ‘building envelope component’ means—

10 “(A) any insulation material or system  
11 which is specifically and primarily designed to  
12 reduce the heat loss or gain of a qualifying new  
13 home when installed in or on such home,

14 “(B) exterior windows (including sky-  
15 lights), and

16 “(C) exterior doors.

17 “(d) CERTIFICATION.—

18 “(1) METHOD OF CERTIFICATION.—

19 “(A) IN GENERAL.—A certification de-  
20 scribed in subsection (b)(1)(B) shall be deter-  
21 mined either by a component-based method, a  
22 performance-based method, or a guarantee-  
23 based method, or, in the case of a qualifying  
24 new home which is a manufactured home, by a  
25 method prescribed by the Administrator of the

1 Environmental Protection Agency under the  
2 Energy Star Labeled Homes program.

3 “(B) COMPONENT-BASED METHOD.—A  
4 component-based method is a method which  
5 uses the applicable technical energy efficiency  
6 specifications or ratings (including product la-  
7 beling requirements) for the energy efficient  
8 building envelope component or energy efficient  
9 heating or cooling equipment. The Secretary  
10 shall, in consultation with the Administrator of  
11 the Environmental Protection Agency, develop  
12 prescriptive component-based packages which  
13 are equivalent in energy performance to prop-  
14 erties which qualify under subparagraph (C).

15 “(C) PERFORMANCE-BASED METHOD.—

16 “(i) IN GENERAL.—A performance-  
17 based method is a method which calculates  
18 projected energy usage and cost reductions  
19 in the qualifying new home in relation to  
20 a new home—

21 “(I) heated by the same fuel  
22 type, and

23 “(II) constructed in accordance  
24 with the latest standards of chapter 4  
25 of the International Energy Conserva-

1           tion Code approved by the Depart-  
2           ment of Energy before the construc-  
3           tion of such qualifying new home and  
4           any applicable Federal minimum effi-  
5           ciency standards for equipment.

6           “(ii) COMPUTER SOFTWARE.—Com-  
7           puter software shall be used in support of  
8           a performance-based method certification  
9           under clause (i). Such software shall meet  
10          procedures and methods for calculating en-  
11          ergy and cost savings in regulations pro-  
12          mulgated by the Secretary of Energy.

13          “(D) GUARANTEE-BASED METHOD.—

14          “(i) IN GENERAL.—A guarantee-based  
15          method is a method which guarantees in  
16          writing to the homeowner energy savings  
17          of either 30 percent or 50 percent over the  
18          2000 International Energy Conservation  
19          Code for heating and cooling costs. The  
20          guarantee shall be provided for a minimum  
21          of 2 years and shall fully reimburse the  
22          homeowner any heating and cooling costs  
23          in excess of the guaranteed amount.

24          “(ii) COMPUTER SOFTWARE.—Com-  
25          puter software shall be selected by the pro-

1 vider to support the guarantee-based meth-  
2 od certification under clause (i). Such soft-  
3 ware shall meet procedures and methods  
4 for calculating energy and cost savings in  
5 regulations promulgated by the Secretary  
6 of Energy.

7 “(2) PROVIDER.—A certification described in  
8 subsection (b)(1)(B) shall be provided by—

9 “(A) in the case of a component-based  
10 method, a local building regulatory authority, a  
11 utility, or a home energy rating organization,

12 “(B) in the case of a performance-based  
13 method or a guarantee-based method, an indi-  
14 vidual recognized by an organization designated  
15 by the Secretary for such purposes, or

16 “(C) in the case of a qualifying new home  
17 which is a manufactured home, a manufactured  
18 home primary inspection agency.

19 “(3) FORM.—

20 “(A) IN GENERAL.—A certification de-  
21 scribed in subsection (b)(1)(B) shall be made in  
22 writing in a manner which specifies in readily  
23 verifiable fashion the energy efficient building  
24 envelope components and energy efficient heat-  
25 ing or cooling equipment installed and their re-



1           spective rated energy efficiency performance,  
2           and

3                   “(i) in the case of a performance-  
4                   based method, accompanied by a written  
5                   analysis documenting the proper applica-  
6                   tion of a permissible energy performance  
7                   calculation method to the specific cir-  
8                   cumstances of such qualifying new home,  
9                   and

10                   “(ii) in the case of a qualifying new  
11                   home which is a manufactured home, ac-  
12                   companied by such documentation as re-  
13                   quired by the Administrator of the Envi-  
14                   ronmental Protection Agency under the  
15                   Energy Star Labeled Homes program.

16                   “(B) FORM PROVIDED TO BUYER.—A form  
17                   documenting the energy efficient building enve-  
18                   lope components and energy efficient heating or  
19                   cooling equipment installed and their rated en-  
20                   ergy efficiency performance shall be provided to  
21                   the buyer of the qualifying new home. The form  
22                   shall include labeled R-value for insulation  
23                   products, NFRC-labeled U-factor and solar  
24                   heat gain coefficient for windows, skylights, and  
25                   doors, labeled annual fuel utilization efficiency

(AFUE) ratings for furnaces and boilers, labeled heating seasonal performance factor (HSPF) ratings for electric heat pumps, and labeled seasonal energy efficiency ratio (SEER) ratings for air conditioners.

“(C) RATINGS LABEL AFFIXED IN DWELLING.—A permanent label documenting the ratings in subparagraph (B) shall be affixed to the front of the electrical distribution panel of the qualifying new home, or shall be otherwise permanently displayed in a readily inspectable location in such home.

“(4) REGULATIONS.—

“(A) IN GENERAL.—In prescribing regulations under this subsection for performance-based and guarantee-based certification methods, the Secretary shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

“(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a qualifying new home to be eligible for the credit under this section regardless of whether

1           such home uses a gas or oil furnace or  
2           boiler or an electric heat pump, and

3           “(ii) require that any computer soft-  
4           ware allow for the printing of the Federal  
5           tax forms necessary for the credit under  
6           this section and for the printing of forms  
7           for disclosure to the homebuyer.

8           “(B) PROVIDERS.—For purposes of para-  
9           graph (2)(B), the Secretary shall establish re-  
10          quirements for the designation of individuals  
11          based on the requirements for energy consult-  
12          ants and home energy raters specified by the  
13          Mortgage Industry National Home Energy Rat-  
14          ing Standards.

15          “(e) APPLICATION.—Subsection (a) shall apply to  
16          qualifying new homes the construction of which is substan-  
17          tially completed after December 31, 2004, and purchased  
18          during the period beginning on such date and ending on—

19               “(1) in the case of any 30-percent home, De-  
20          cember 31, 2005, and

21               “(2) in the case of any 50-percent home, De-  
22          cember 31, 2007.”.

23          (b) CREDIT MADE PART OF GENERAL BUSINESS  
24          CREDIT.—Section 38(b) (relating to current year business  
25          credit), as amended by this Act, is amended by striking

1 “plus” at the end of paragraph (21), by striking the period  
2 at the end of paragraph (22) and inserting “, plus”, and  
3 by adding at the end the following new paragraph:

4 “(23) the new energy efficient home credit de-  
5 termined under section 45K(a).”.

6 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C  
7 (relating to certain expenses for which credits are allow-  
8 able) is amended by adding at the end the following new  
9 subsection:

10 “(d) NEW ENERGY EFFICIENT HOME EXPENSES.—  
11 No deduction shall be allowed for that portion of expenses  
12 for a qualifying new home otherwise allowable as a deduc-  
13 tion for the taxable year which is equal to the amount  
14 of the credit determined for such taxable year under sec-  
15 tion 45K(a).”.

16 (d) DEDUCTION FOR CERTAIN UNUSED BUSINESS  
17 CREDITS.—Section 196(c) (defining qualified business  
18 credits), as amended by this Act, is amended by striking  
19 “and” at the end of paragraph (10), by striking the period  
20 at the end of paragraph (11) and inserting “, and”, and  
21 by adding after paragraph (11) the following new para-  
22 graph:

23 “(12) the new energy efficient home credit de-  
24 termined under section 45K(a).”.

1 (e) CLERICAL AMENDMENT.—The table of sections  
 2 for subpart D of part IV of subchapter A of chapter 1,  
 3 as amended by this Act, is amended by adding at the end  
 4 the following new item:

“Sec. 45K. New energy efficient home credit.”.

5 (f) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to homes the construction of which  
 7 is substantially completed after December 31, 2004.

8 **SEC. 822. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-  
 10 chapter A of chapter 1 (relating to business-related cred-  
 11 its), as amended by this Act, is amended by adding at  
 12 the end the following new section:

13 **“SEC. 45L. ENERGY EFFICIENT APPLIANCE CREDIT.**

14 “(a) ALLOWANCE OF CREDIT.—

15 “(1) IN GENERAL.—For purposes of section 38,  
 16 the energy efficient appliance credit determined  
 17 under this section for the taxable year is an amount  
 18 equal to the sum of the amounts determined under  
 19 paragraph (2) for qualified energy efficient appli-  
 20 ances produced by the taxpayer during the calendar  
 21 year ending with or within the taxable year.

22 “(2) AMOUNT.—The amount determined under  
 23 this paragraph for any category described in sub-  
 24 section (b)(2)(B) shall be the product of the applica-

1       ble amount for appliances in the category and the el-  
2       igible production for the category.

3       “(b) APPLICABLE AMOUNT; ELIGIBLE PRODUC-  
4       TION.—For purposes of subsection (a)—

5               “(1) APPLICABLE AMOUNT.—The applicable  
6       amount is—

7                       “(A) \$50, in the case of—

8                               “(i) a clothes washer which is manu-  
9                               factured with at least a 1.42 MEF, or

10                              “(ii) a refrigerator which consumes at  
11                              least 10 percent less kilowatt hours per  
12                              year than the energy conservation stand-  
13                              ards for refrigerators promulgated by the  
14                              Department of Energy and effective on  
15                              July 1, 2001,

16                       “(B) \$100, in the case of—

17                               “(i) a clothes washer which is manu-  
18                               factured with at least a 1.50 MEF, or

19                              “(ii) a refrigerator which consumes at  
20                              least 15 percent (20 percent in the case of  
21                              a refrigerator manufactured after 2006)  
22                              less kilowatt hours per year than such en-  
23                              ergy conservation standards, and

24                       “(C) \$150, in the case of a refrigerator  
25       manufactured before 2007 which consumes at

1           least 20 percent less kilowatt hours per year  
2           than such energy conservation standards.

3           “(2) ELIGIBLE PRODUCTION.—

4                 “(A) IN GENERAL.—The eligible produc-  
5           tion of each category of qualified energy effi-  
6           cient appliances is the excess of—

7                 “(i) the number of appliances in such  
8           category which are produced by the tax-  
9           payer during such calendar year, over

10                “(ii) the average number of appliances  
11           in such category which were produced by  
12           the taxpayer during calendar years 2001,  
13           2002, and 2003.

14                “(B) CATEGORIES.—For purposes of sub-  
15           paragraph (A), the categories are—

16                “(i) clothes washers described in para-  
17           graph (1)(A)(i),

18                “(ii) clothes washers described in  
19           paragraph (1)(B)(i),

20                “(iii) refrigerators described in para-  
21           graph (1)(A)(ii),

22                “(iv) refrigerators described in para-  
23           graph (1)(B)(ii), and

24                “(v) refrigerators described in para-  
25           graph (1)(C).

1 “(c) LIMITATION ON MAXIMUM CREDIT.—

2 “(1) IN GENERAL.—The amount of credit al-  
3 lowed under subsection (a) with respect to a tax-  
4 payer for all taxable years shall not exceed  
5 \$60,000,000, of which not more than \$30,000,000  
6 may be allowed with respect to the credit determined  
7 by using the applicable amount under subsection  
8 (b)(1)(A).

9 “(2) LIMITATION BASED ON GROSS RE-  
10 CEIPTS.—The credit allowed under subsection (a)  
11 with respect to a taxpayer for the taxable year shall  
12 not exceed an amount equal to 2 percent of the aver-  
13 age annual gross receipts of the taxpayer for the 3  
14 taxable years preceding the taxable year in which  
15 the credit is determined.

16 “(3) GROSS RECEIPTS.—For purposes of this  
17 subsection, the rules of paragraphs (2) and (3) of  
18 section 448(c) shall apply.

19 “(d) DEFINITIONS.—For purposes of this section—

20 “(1) QUALIFIED ENERGY EFFICIENT APPLI-  
21 ANCE.—The term ‘qualified energy efficient appli-  
22 ance’ means—

23 “(A) a clothes washer described in sub-  
24 paragraph (A)(i) or (B)(i) of subsection (b)(1),  
25 or



1           “(B) a refrigerator described in subpara-  
2           graph (A)(ii), (B)(ii), or (C) of subsection  
3           (b)(1).

4           “(2) CLOTHES WASHER.—The term ‘clothes  
5           washer’ means a residential clothes washer, includ-  
6           ing a residential style coin operated washer.

7           “(3) REFRIGERATOR.—The term ‘refrigerator’  
8           means an automatic defrost refrigerator-freezer  
9           which has an internal volume of at least 16.5 cubic  
10          feet.

11          “(4) MEF.—The term ‘MEF’ means Modified  
12          Energy Factor (as determined by the Secretary of  
13          Energy).

14          “(e) SPECIAL RULES.—

15               “(1) IN GENERAL.—Rules similar to the rules  
16               of subsections (c), (d), and (e) of section 52 shall  
17               apply for purposes of this section.

18               “(2) AGGREGATION RULES.—All persons treat-  
19               ed as a single employer under subsection (a) or (b)  
20               of section 52 or subsection (m) or (o) of section 414  
21               shall be treated as 1 person for purposes of sub-  
22               section (a).

23          “(f) VERIFICATION.—The taxpayer shall submit such  
24          information or certification as the Secretary, in consulta-

tion with the Secretary of Energy, determines necessary  
to claim the credit amount under subsection (a).

“(g) TERMINATION.—This section shall not apply—

“(1) with respect to refrigerators described in  
subsection (b)(1)(A)(ii) produced after December 31,  
2005, and

“(2) with respect to all other qualified energy  
efficient appliances produced after December 31,  
2007.”.

(b) CREDIT MADE PART OF GENERAL BUSINESS  
CREDIT.—Section 38(b) (relating to current year business  
credit), as amended by this Act, is amended by striking  
“plus” at the end of paragraph (22), by striking the period  
at the end of paragraph (23) and inserting “, plus”, and  
by adding at the end the following new paragraph:

“(24) the energy efficient appliance credit de-  
termined under section 45L(a).”.

(c) CLERICAL AMENDMENT.—The table of sections  
for subpart D of part IV of subchapter A of chapter 1,  
as amended by this Act, is amended by adding at the end  
the following new item:

“Sec. 45L. Energy efficient appliance credit.”.

(d) EFFECTIVE DATE.—The amendments made by  
this section shall apply to appliances produced after De-  
cember 31, 2004, in taxable years ending after such date.

1 **SEC. 823. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT**  
2 **PROPERTY.**

3 (a) IN GENERAL.—Subpart A of part IV of sub-  
4 chapter A of chapter 1 (relating to nonrefundable personal  
5 credits) is amended by inserting after section 25B the fol-  
6 lowing new section:

7 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

8 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
9 dividual, there shall be allowed as a credit against the tax  
10 imposed by this chapter for the taxable year an amount  
11 equal to the sum of—

12 “(1) 15 percent of the qualified photovoltaic  
13 property expenditures made by the taxpayer during  
14 such year,

15 “(2) 15 percent of the qualified solar water  
16 heating property expenditures made by the taxpayer  
17 during such year,

18 “(3) 30 percent of the qualified fuel cell prop-  
19 erty expenditures made by the taxpayer during such  
20 year,

21 “(4) 30 percent of the qualified wind energy  
22 property expenditures made by the taxpayer during  
23 such year, and

24 “(5) the sum of the qualified Tier 2 energy effi-  
25 cient building property expenditures made by the  
26 taxpayer during such year.

1 “(b) LIMITATIONS.—

2 “(1) MAXIMUM CREDIT.—The credit allowed  
3 under subsection (a) shall not exceed—

4 “(A) \$2,000 for property described in  
5 paragraph (1), (2), or (5) of subsection (d),

6 “(B) \$500 for each 0.5 kilowatt of capac-  
7 ity of property described in subsection (d)(4),  
8 and

9 “(C) for property described in subsection  
10 (d)(6)—

11 “(i) \$150 for each electric heat pump  
12 water heater,

13 “(ii) \$125 for each advanced natural  
14 gas, oil, propane furnace, or hot water boil-  
15 er,

16 “(iii) \$150 for each advanced natural  
17 gas, oil, or propane water heater,

18 “(iv) \$50 for each natural gas, oil, or  
19 propane water heater,

20 “(v) \$50 for an advanced main air  
21 circulating fan,

22 “(vi) \$150 for each advanced com-  
23 bination space and water heating system,

24 “(vii) \$50 for each combination space  
25 and water heating system, and

1                   “(viii) \$250 for each geothermal heat  
2                   pump.

3                   “(2) SAFETY CERTIFICATIONS.—No credit shall  
4                   be allowed under this section for an item of property  
5                   unless—

6                   “(A) in the case of solar water heating  
7                   property, such property is certified for perform-  
8                   ance and safety by the non-profit Solar Rating  
9                   Certification Corporation or a comparable enti-  
10                  ty endorsed by the government of the State in  
11                  which such property is installed,

12                  “(B) in the case of a photovoltaic property,  
13                  a fuel cell property, or a wind energy property,  
14                  such property meets appropriate fire and elec-  
15                  tric code requirements, and

16                  “(C) in the case of property described in  
17                  subsection (d)(6), such property meets the per-  
18                  formance and quality standards, and the certifi-  
19                  cation requirements (if any), which—

20                  “(i) have been prescribed by the Sec-  
21                  retary by regulations (after consultation  
22                  with the Secretary of Energy or the Ad-  
23                  ministrator of the Environmental Protec-  
24                  tion Agency, as appropriate),

1 “(ii) in the case of the energy effi-  
 2 ciency ratio (EER) for property described  
 3 in subsection (d)(6)(B)(viii)—

4 “(I) require measurements to be  
 5 based on published data which is test-  
 6 ed by manufacturers at 95 degrees  
 7 Fahrenheit, and

8 “(II) do not require ratings to be  
 9 based on certified data of the Air  
 10 Conditioning and Refrigeration Insti-  
 11 tute, and

12 “(iii) are in effect at the time of the  
 13 acquisition of the property.

14 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the  
 15 credit allowable under subsection (a) exceeds the limita-  
 16 tion imposed by section 26(a) for such taxable year re-  
 17 duced by the sum of the credits allowable under this sub-  
 18 part (other than this section and section 25D), such excess  
 19 shall be carried to the succeeding taxable year and added  
 20 to the credit allowable under subsection (a) for such suc-  
 21 ceeding taxable year.

22 “(d) DEFINITIONS.—For purposes of this section—

23 “(1) QUALIFIED SOLAR WATER HEATING PROP-  
 24 erty EXPENDITURE.—The term ‘qualified solar  
 25 water heating property expenditure’ means an ex-

penditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

“(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term ‘qualified photovoltaic property expenditure’ means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

“(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

“(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term ‘qualified fuel cell property expenditure’ means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

1           “(5) QUALIFIED WIND ENERGY PROPERTY EX-  
 2           PENDITURE.—The term ‘qualified wind energy prop-  
 3           erty expenditure’ means an expenditure for property  
 4           which uses wind energy to generate electricity for  
 5           use in a dwelling unit located in the United States  
 6           and used as a residence by the taxpayer.

7           “(6) QUALIFIED TIER 2 ENERGY EFFICIENT  
 8           BUILDING PROPERTY EXPENDITURE.—

9           “(A) IN GENERAL.—The term ‘qualified  
 10           Tier 2 energy efficient building property ex-  
 11           penditure’ means an expenditure for any Tier 2  
 12           energy efficient building property.

13           “(B) TIER 2 ENERGY EFFICIENT BUILDING  
 14           PROPERTY.—The term ‘Tier 2 energy efficient  
 15           building property’ means—

16           “(i) an electric heat pump water heat-  
 17           er which yields an energy factor of at least  
 18           1.7 in the standard Department of Energy  
 19           test procedure,

20           “(ii) an advanced natural gas, oil,  
 21           propane furnace, or hot water boiler which  
 22           achieves at least 95 percent annual fuel  
 23           utilization efficiency (AFUE),

24           “(iii) an advanced natural gas, oil, or  
 25           propane water heater which has an energy



1 factor of at least 0.80 in the standard De-  
2 partment of Energy test procedure,

3 “(iv) a natural gas, oil, or propane  
4 water heater which has an energy factor of  
5 at least 0.65 but less than 0.80 in the  
6 standard Department of Energy test proce-  
7 dure,

8 “(v) an advanced main air circulating  
9 fan used in a new natural gas, propane, or  
10 oil-fired furnace, including main air circu-  
11 lating fans that use a brushless permanent  
12 magnet motor or another type of motor  
13 which achieves similar or higher efficiency  
14 at half and full speed, as determined by  
15 the Secretary,

16 “(vi) an advanced combination space  
17 and water heating system which has a  
18 combined energy factor of at least 0.80  
19 and a combined annual fuel utilization effi-  
20 ciency (AFUE) of at least 78 percent in  
21 the standard Department of Energy test  
22 procedure,

23 “(vii) a combination space and water  
24 heating system which has a combined en-  
25 ergy factor of at least 0.65 but less than

1           0.80 and a combined annual fuel utiliza-  
2           tion efficiency (AFUE) of at least 78 per-  
3           cent in the standard Department of En-  
4           ergy test procedure, and

5           “(viii) a geothermal heat pump which  
6           has an energy efficiency ratio (EER) of at  
7           least 21.

8           “(7) LABOR COSTS.—Expenditures for labor  
9           costs properly allocable to the onsite preparation, as-  
10          sembly, or original installation of the property de-  
11          scribed in paragraph (1), (2), (4), (5), or (6) and for  
12          piping or wiring to interconnect such property to the  
13          dwelling unit shall be taken into account for pur-  
14          poses of this section.

15          “(8) SWIMMING POOLS, ETC., USED AS STOR-  
16          AGE MEDIUM.—Expenditures which are properly al-  
17          locable to a swimming pool, hot tub, or any other  
18          energy storage medium which has a function other  
19          than the function of such storage shall not be taken  
20          into account for purposes of this section.

21          “(e) SPECIAL RULES.—For purposes of this sec-  
22          tion—

23               “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
24               CUPANCY.—In the case of any dwelling unit which is  
25               jointly occupied and used during any calendar year

1 as a residence by 2 or more individuals the following  
2 rules shall apply:

3 “(A) The amount of the credit allowable,  
4 under subsection (a) by reason of expenditures  
5 (as the case may be) made during such cal-  
6 endar year by any of such individuals with re-  
7 spect to such dwelling unit shall be determined  
8 by treating all of such individuals as 1 taxpayer  
9 whose taxable year is such calendar year.

10 “(B) There shall be allowable, with respect  
11 to such expenditures to each of such individ-  
12 uals, a credit under subsection (a) for the tax-  
13 able year in which such calendar year ends in  
14 an amount which bears the same ratio to the  
15 amount determined under subparagraph (A) as  
16 the amount of such expenditures made by such  
17 individual during such calendar year bears to  
18 the aggregate of such expenditures made by all  
19 of such individuals during such calendar year.

20 “(2) TENANT-STOCKHOLDER IN COOPERATIVE  
21 HOUSING CORPORATION.—In the case of an indi-  
22 vidual who is a tenant-stockholder (as defined in sec-  
23 tion 216) in a cooperative housing corporation (as  
24 defined in such section), such individual shall be  
25 treated as having made his tenant-stockholder’s pro-

1       portionate share (as defined in section 216(b)(3)) of  
2       any expenditures of such corporation.

3               “(3) CONDOMINIUMS.—

4                       “(A) IN GENERAL.—In the case of an indi-  
5       vidual who is a member of a condominium man-  
6       agement association with respect to a condo-  
7       minium which the individual owns, such indi-  
8       vidual shall be treated as having made the indi-  
9       vidual’s proportionate share of any expenditures  
10      of such association.

11                      “(B) CONDOMINIUM MANAGEMENT ASSO-  
12      CIATION.—For purposes of this paragraph, the  
13      term ‘condominium management association’  
14      means an organization which meets the require-  
15      ments of paragraph (1) of section 528(c) (other  
16      than subparagraph (E) thereof) with respect to  
17      a condominium project substantially all of the  
18      units of which are used as residences.

19               “(4) ALLOCATION IN CERTAIN CASES.—Except  
20      in the case of qualified wind energy property expend-  
21      itures, if less than 80 percent of the use of an item  
22      is for nonbusiness purposes, only that portion of the  
23      expenditures for such item which is properly allo-  
24      cable to use for nonbusiness purposes shall be taken  
25      into account.

1           “(5) WHEN EXPENDITURE MADE; AMOUNT OF  
2       EXPENDITURE.—

3           “(A) IN GENERAL.—Except as provided in  
4       subparagraph (B), an expenditure with respect  
5       to an item shall be treated as made when the  
6       original installation of the item is completed.

7           “(B) EXPENDITURES PART OF BUILDING  
8       CONSTRUCTION.—In the case of an expenditure  
9       in connection with the construction or recon-  
10      struction of a structure, such expenditure shall  
11      be treated as made when the original use of the  
12      constructed or reconstructed structure by the  
13      taxpayer begins.

14          “(C) AMOUNT.—The amount of any ex-  
15      penditure shall be the cost thereof.

16          “(6) PROPERTY FINANCED BY SUBSIDIZED EN-  
17      ERGY FINANCING.—For purposes of determining the  
18      amount of expenditures made by any individual with  
19      respect to any dwelling unit, there shall not be taken  
20      into account expenditures which are made from sub-  
21      sidized energy financing (as defined in section  
22      48(a)(5)(C)).

23          “(f) BASIS ADJUSTMENTS.—For purposes of this  
24      subtitle, if a credit is allowed under this section for any  
25      expenditure with respect to any property, the increase in

1 the basis of such property which would (but for this sub-  
 2 section) result from such expenditure shall be reduced by  
 3 the amount of the credit so allowed.

4 “(g) TERMINATION.—The credit allowed under this  
 5 section shall not apply to expenditures after December 31,  
 6 2007.”.

7 (b) CREDIT ALLOWED AGAINST REGULAR TAX AND  
 8 ALTERNATIVE MINIMUM TAX.—

9 (1) IN GENERAL.—Section 25C(b), as added by  
 10 subsection (a), is amended by adding at the end the  
 11 following new paragraph:

12 “(3) LIMITATION BASED ON AMOUNT OF  
 13 TAX.—The credit allowed under subsection (a) for  
 14 the taxable year shall not exceed the excess of—

15 “(A) the sum of the regular tax liability  
 16 (as defined in section 26(b)) plus the tax im-  
 17 posed by section 55, over

18 “(B) the sum of the credits allowable  
 19 under this subpart (other than this section and  
 20 section 25D) and section 27 for the taxable  
 21 year.”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 25C(c), as added by subsection  
 24 (a), is amended by striking “section 26(a) for  
 25 such taxable year reduced by the sum of the

1 credits allowable under this subpart (other than  
 2 this section and section 25D)” and inserting  
 3 “subsection (b)(3)”.

4 (B) Section 23(b)(4)(B) is amended by in-  
 5 serting “and section 25C” after “this section”.

6 (C) Section 24(b)(3)(B) is amended by  
 7 striking “23 and 25B” and inserting “23, 25B,  
 8 and 25C”.

9 (D) Section 25(e)(1)(C) is amended by in-  
 10 serting “25C,” after “25B,”.

11 (E) Section 25B(g)(2) is amended by  
 12 striking “section 23” and inserting “sections 23  
 13 and 25C”.

14 (F) Section 26(a)(1) is amended by strik-  
 15 ing “and 25B” and inserting “25B, and 25C”.

16 (G) Section 904(i), as redesignated and  
 17 amended by this Act, is amended by striking  
 18 “and 25B” and inserting “25B, and 25C”.

19 (H) Section 1400C(d) is amended by strik-  
 20 ing “and 25B” and inserting “25B, and 25C”.

21 (c) ADDITIONAL CONFORMING AMENDMENTS.—

22 (1) Section 1016(a), as amended by this Act, is  
 23 amended by striking “and” at the end of paragraph  
 24 (33), by striking the period at the end of paragraph

1 (34) and inserting “, and”, and by adding at the  
 2 end the following new paragraph:

3 “(35) to the extent provided in section 25C(f),  
 4 in the case of amounts with respect to which a credit  
 5 has been allowed under section 25C.”.

6 (2) The table of sections for subpart A of part  
 7 IV of subchapter A of chapter 1 is amended by in-  
 8 serting after the item relating to section 25B the fol-  
 9 lowing new item:

“Sec. 25C. Residential energy efficient property.”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided by para-  
 12 graph (2), the amendments made by this section  
 13 shall apply to expenditures after December 31,  
 14 2004, in taxable years ending after such date.

15 (2) SUBSECTION (b).—The amendments made  
 16 by subsection (b) shall apply to taxable years begin-  
 17 ning after December 31, 2004.

18 **SEC. 824. CREDIT FOR BUSINESS INSTALLATION OF QUALI-**  
 19 **FIED FUEL CELLS AND STATIONARY MICRO-**  
 20 **TURBINE POWER PLANTS.**

21 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-  
 22 ergy property) is amended by striking “or” at the end of  
 23 clause (i), by adding “or” at the end of clause (ii), and  
 24 by inserting after clause (ii) the following new clause:



1 “(iii) qualified fuel cell property or  
2 qualified microturbine property,”.

3 (b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED  
4 MICROTURBINE PROPERTY.—Section 48(a) (relating to  
5 energy credit) is amended by redesignating paragraphs (4)  
6 and (5) as paragraphs (5) and (6), respectively, and by  
7 inserting after paragraph (3) the following new paragraph:

8 “(4) QUALIFIED FUEL CELL PROPERTY; QUALI-  
9 FIED MICROTURBINE PROPERTY.—For purposes of  
10 this subsection—

11 “(A) QUALIFIED FUEL CELL PROPERTY.—

12 “(i) IN GENERAL.—The term ‘quali-  
13 fied fuel cell property’ means a fuel cell  
14 power plant which—

15 “(I) generates at least 0.5 kilo-  
16 watt of electricity using an electro-  
17 chemical process, and

18 “(II) has an electricity-only gen-  
19 eration efficiency greater than 30 per-  
20 cent.

21 “(ii) LIMITATION.—In the case of  
22 qualified fuel cell property placed in service  
23 during the taxable year, the credit other-  
24 wise determined under paragraph (1) for  
25 such year with respect to such property

1 shall not exceed an amount equal to \$500  
2 for each 0.5 kilowatt of capacity of such  
3 property.

4 “(iii) FUEL CELL POWER PLANT.—  
5 The term ‘fuel cell power plant’ means an  
6 integrated system comprised of a fuel cell  
7 stack assembly and associated balance of  
8 plant components which converts a fuel  
9 into electricity using electrochemical  
10 means.

11 “(iv) TERMINATION.—The term  
12 ‘qualified fuel cell property’ shall not in-  
13 clude any property placed in service after  
14 December 31, 2007.

15 “(B) QUALIFIED MICROTURBINE PROP-  
16 ERTY.—

17 “(i) IN GENERAL.—The term ‘quali-  
18 fied microturbine property’ means a sta-  
19 tionary microturbine power plant which—

20 “(I) has a capacity of less than  
21 2,000 kilowatts, and

22 “(II) has an electricity-only gen-  
23 eration efficiency of not less than 26  
24 percent at International Standard Or-  
25 ganization conditions.

1           “(ii) LIMITATION.—In the case of  
2           qualified microturbine property placed in  
3           service during the taxable year, the credit  
4           otherwise determined under paragraph (1)  
5           for such year with respect to such property  
6           shall not exceed an amount equal \$200 for  
7           each kilowatt of capacity of such property.

8           “(iii) STATIONARY MICROTURBINE  
9           POWER PLANT.—The term ‘stationary  
10          microturbine power plant’ means an inte-  
11          grated system comprised of a gas turbine  
12          engine, a combustor, a recuperator or re-  
13          generator, a generator or alternator, and  
14          associated balance of plant components  
15          which converts a fuel into electricity and  
16          thermal energy. Such term also includes all  
17          secondary components located between the  
18          existing infrastructure for fuel delivery and  
19          the existing infrastructure for power dis-  
20          tribution, including equipment and controls  
21          for meeting relevant power standards, such  
22          as voltage, frequency, and power factors.

23          “(iv) TERMINATION.—The term  
24          ‘qualified microturbine property’ shall not

1 include any property placed in service after  
 2 December 31, 2006.”.

3 (c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (re-  
 4 lating to energy percentage) is amended to read as follows:

5 “(A) IN GENERAL.—The energy percent-  
 6 age is—

7 “(i) in the case of qualified fuel cell  
 8 property, 30 percent, and

9 “(ii) in the case of any other energy  
 10 property, 10 percent.”.

11 (d) CONFORMING AMENDMENTS.—

12 (A) Section 29(b)(3)(A)(i)(III) is amended  
 13 by striking “section 48(a)(4)(C)” and inserting  
 14 “section 48(a)(5)(C)”.

15 (B) Section 48(a)(1) is amended by insert-  
 16 ing “except as provided in subparagraph (A)(ii)  
 17 or (B)(ii) of paragraph (4),” before “the en-  
 18 ergy”.

19 (e) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply to property placed in service after  
 21 December 31, 2004, in taxable years ending after such  
 22 date, under rules similar to the rules of section 48(m) of  
 23 the Internal Revenue Code of 1986 (as in effect on the  
 24 day before the date of the enactment of the Revenue Rec-  
 25 onciliation Act of 1990).

1 **SEC. 825. ENERGY EFFICIENT COMMERCIAL BUILDINGS DE-**  
2 **DUCTION.**

3 (a) IN GENERAL.—Part VI of subchapter B of chap-  
4 ter 1 (relating to itemized deductions for individuals and  
5 corporations) is amended by inserting after section 179A  
6 the following new section:

7 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**  
8 **DEDUCTION.**

9 “(a) IN GENERAL.—There shall be allowed as a de-  
10 duction for the taxable year in which a building is placed  
11 in service by a taxpayer, an amount equal to the energy  
12 efficient commercial building property expenditures made  
13 by such taxpayer with respect to the construction or recon-  
14 struction of such building for the taxable year or any pre-  
15 ceding taxable year.

16 “(b) MAXIMUM AMOUNT OF DEDUCTION.—The  
17 amount of energy efficient commercial building property  
18 expenditures taken into account under subsection (a) shall  
19 not exceed an amount equal to the product of—

20 “(1) \$2.25, and

21 “(2) the square footage of the building with re-  
22 spect to which the expenditures are made.

23 “(c) ENERGY EFFICIENT COMMERCIAL BUILDING  
24 PROPERTY EXPENDITURES.—For purposes of this sec-  
25 tion—

1           “(1) IN GENERAL.—The term ‘energy efficient  
2       commercial building property expenditures’ means  
3       amounts paid or incurred for energy efficient prop-  
4       erty installed on or in connection with the construc-  
5       tion or reconstruction of a building—

6           “(A) for which depreciation is allowable  
7       under section 167,

8           “(B) which is located in the United States,  
9       and

10          “(C) which is the type of structure to  
11       which the Standard 90.1–2001 of the American  
12       Society of Heating, Refrigerating, and Air Con-  
13       ditioning Engineers and the Illuminating Engi-  
14       neering Society of North America is applicable.

15       Such term includes expenditures for labor costs  
16       properly allocable to the onsite preparation, assem-  
17       bly, or original installation of the property.

18          “(2) ENERGY EFFICIENT PROPERTY.—For pur-  
19       poses of paragraph (1)—

20          “(A) IN GENERAL.—The term ‘energy effi-  
21       cient property’ means any property which re-  
22       duces total annual energy and power costs with  
23       respect to the lighting, heating, cooling, ventila-  
24       tion, and hot water supply systems of the build-  
25       ing by 50 percent or more in comparison to a

1 building which meets the minimum require-  
2 ments of Standard 90.1–2001 of the American  
3 Society of Heating, Refrigerating, and Air Con-  
4 ditioning Engineers and the Illuminating Engi-  
5 neering Society of North America, using meth-  
6 ods of calculation described in subparagraph  
7 (B) and certified by qualified individuals as  
8 provided under paragraph (5).

9 “(B) METHODS OF CALCULATION.—The  
10 Secretary, in consultation with the Secretary of  
11 Energy, shall promulgate regulations which de-  
12 scribe in detail methods for calculating and  
13 verifying energy and power costs.

14 “(C) COMPUTER SOFTWARE.—

15 “(i) IN GENERAL.—Any calculation  
16 described in subparagraph (B) shall be  
17 prepared by qualified computer software.

18 “(ii) QUALIFIED COMPUTER SOFT-  
19 WARE.—For purposes of this subpara-  
20 graph, the term ‘qualified computer soft-  
21 ware’ means software—

22 “(I) for which the software de-  
23 signer has certified that the software  
24 meets all procedures and detailed  
25 methods for calculating energy and

1 power costs as required by the Sec-  
2 retary,

3 “(II) which provides such forms  
4 as required to be filed by the Sec-  
5 retary in connection with energy effi-  
6 ciency of property and the deduction  
7 allowed under this section, and

8 “(III) which provides a notice  
9 form which summarizes the energy ef-  
10 ficiency features of the building and  
11 its projected annual energy costs.

12 “(3) ALLOCATION OF DEDUCTION FOR PUBLIC  
13 PROPERTY.—In the case of energy efficient commer-  
14 cial building property expenditures made by a public  
15 entity with respect to the construction or reconstruc-  
16 tion of a public building, the Secretary shall promul-  
17 gate regulations under which the value of the deduc-  
18 tion with respect to such expenditures which would  
19 be allowable to the public entity under this section  
20 (determined without regard to the tax-exempt status  
21 of such entity) may be allocated to the person pri-  
22 marily responsible for designing the energy efficient  
23 property. Such person shall be treated as the tax-  
24 payer for purposes of this section.



1           “(4) NOTICE TO OWNER.—Any qualified indi-  
2           vidual providing a certification under paragraph (5)  
3           shall provide an explanation to the owner of the  
4           building regarding the energy efficiency features of  
5           the building and its projected annual energy costs as  
6           provided in the notice under paragraph  
7           (2)(C)(ii)(III).

8           “(5) CERTIFICATION.—

9           “(A) IN GENERAL.—The Secretary shall  
10          prescribe procedures for the inspection and test-  
11          ing for compliance of buildings by qualified in-  
12          dividuals described in subparagraph (B). Such  
13          procedures shall be—

14               “(i) comparable, given the difference  
15               between commercial and residential build-  
16               ings, to the requirements in the Mortgage  
17               Industry National Home Energy Rating  
18               Standards, and

19               “(ii) fuel neutral such that the same  
20               energy efficiency measures allow a building  
21               to be eligible for the credit under this sec-  
22               tion regardless of whether such building  
23               uses a gas or oil furnace or boiler or an  
24               electric heat pump.

1           “(B) QUALIFIED INDIVIDUALS.—Individ-  
2           uals qualified to determine compliance shall be  
3           only those individuals who are recognized by an  
4           organization certified by the Secretary for such  
5           purposes. The Secretary may qualify a home  
6           energy ratings organization, a local building  
7           regulatory authority, a State or local energy of-  
8           fice, a utility, or any other organization which  
9           meets the requirements prescribed under this  
10          paragraph.

11          “(C) PROFICIENCY OF QUALIFIED INDIVID-  
12          UALS.—The Secretary shall consult with non-  
13          profit organizations and State agencies with ex-  
14          pertise in energy efficiency calculations and in-  
15          spections to develop proficiency tests and train-  
16          ing programs to qualify individuals to determine  
17          compliance.

18          “(d) BASIS REDUCTION.—For purposes of this sub-  
19          title, if a deduction is allowed under this section with re-  
20          spect to any energy efficient property, the basis of such  
21          property shall be reduced by the amount of the deduction  
22          so allowed.

23          “(e) INTERIM RULES FOR LIGHTING SYSTEMS.—  
24          Until such time as the Secretary issues final regulations

1 under subsection (c)(2)(B) with respect to property which  
2 is part of a lighting system—

3 “(1) IN GENERAL.—The lighting system target  
4 under subsection (d)(1)(A)(ii) shall be a reduction in  
5 lighting power density of 25 percent (50 percent in  
6 the case of a warehouse) of the minimum require-  
7 ments in Table 9.3.1.1 or Table 9.3.1.2 (not includ-  
8 ing additional interior lighting power allowances) of  
9 Standard 90.1–2001.

10 “(2) REDUCTION IN CREDIT IF REDUCTION  
11 LESS THAN 40 PERCENT.—

12 “(A) IN GENERAL.—If, with respect to the  
13 lighting system of any building other than a  
14 warehouse, the reduction of lighting power den-  
15 sity of the lighting system is not at least 40  
16 percent, only the applicable percentage of the  
17 amount of credit otherwise allowable under this  
18 section with respect to such property shall be  
19 allowed.

20 “(B) APPLICABLE PERCENTAGE.—For  
21 purposes of subparagraph (A), the applicable  
22 percentage is the number of percentage points  
23 (not greater than 100) equal to the sum of—

24 “(i) 50, and

1 “(ii) the amount which bears the same  
2 ratio to 50 as the excess of the reduction  
3 of lighting power density of the lighting  
4 system over 25 percentage points bears to  
5 15.

6 “(C) EXCEPTIONS.—This subsection shall  
7 not apply to any system—

8 “(i) the controls and circuiting of  
9 which do not comply fully with the manda-  
10 tory and prescriptive requirements of  
11 Standard 90.1–2001 and which do not in-  
12 clude provision for bilevel switching in all  
13 occupancies except hotel and motel guest  
14 rooms, store rooms, restrooms, and public  
15 lobbies, or

16 “(ii) which does not meet the min-  
17 imum requirements for calculated lighting  
18 levels as set forth in the Illuminating Engi-  
19 neering Society of North America Lighting  
20 Handbook, Performance and Application,  
21 Ninth Edition, 2000.

22 “(f) REGULATIONS.—The Secretary shall promulgate  
23 such regulations as necessary to take into account new  
24 technologies regarding energy efficiency and renewable en-

1 ergy for purposes of determining energy efficiency and  
2 savings under this section.

3 “(g) TERMINATION.—This section shall not apply  
4 with respect to any energy efficient commercial building  
5 property expenditures in connection with a building the  
6 construction of which is not completed on or before De-  
7 cember 31, 2009.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 1016(a), as amended by this Act, is  
10 amended by striking “and” at the end of paragraph  
11 (34), by striking the period at the end of paragraph  
12 (35) and inserting “, and”, and by adding at the  
13 end the following new paragraph:

14 “(36) to the extent provided in section  
15 179B(d).”.

16 (2) Section 1245(a) is amended by inserting  
17 “179B,” after “179A,” both places it appears in  
18 paragraphs (2)(C) and (3)(C).

19 (3) Section 1250(b)(3) is amended by inserting  
20 before the period at the end of the first sentence “or  
21 by section 179B”.

22 (4) Section 263(a)(1), as amended by this Act,  
23 is amended by striking “or” at the end of subpara-  
24 graph (H), by striking the period at the end of sub-  
25 paragraph (I) and inserting “, or”, and by inserting

1 after subparagraph (I) the following new subpara-  
 2 graph:

3 “(J) expenditures for which a deduction is  
 4 allowed under section 179B.”.

5 (5) Section 312(k)(3)(B) is amended by strik-  
 6 ing “or 179A” each place it appears in the heading  
 7 and text and inserting “, 179A, or 179B”.

8 (c) CLERICAL AMENDMENT.—The table of sections  
 9 for part VI of subchapter B of chapter 1 is amended by  
 10 inserting after section 179A the following new item:

“Sec. 179B. Energy efficient commercial buildings deduction.”.

11 (d) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to taxable years beginning after  
 13 December 31, 2004.

14 **SEC. 826. THREE-YEAR APPLICABLE RECOVERY PERIOD**  
 15 **FOR DEPRECIATION OF QUALIFIED ENERGY**  
 16 **MANAGEMENT DEVICES.**

17 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-  
 18 year property) is amended by striking “and” at the end  
 19 of clause (ii), by striking the period at the end of clause  
 20 (iii) and inserting “, and”, and by adding at the end the  
 21 following new clause:

22 “(iv) any qualified energy manage-  
 23 ment device.”.

24 (b) DEFINITION OF QUALIFIED ENERGY MANAGE-  
 25 MENT DEVICE.—Section 168(i) (relating to definitions

1 and special rules), as amended by this Act, is amended  
 2 by inserting at the end the following new paragraph:

3           “(17) QUALIFIED ENERGY MANAGEMENT DE-  
 4       VICE.—

5           “(A) IN GENERAL.—The term ‘qualified  
 6       energy management device’ means any energy  
 7       management device which is placed in service  
 8       before January 1, 2008, by a taxpayer who is  
 9       a supplier of electric energy or a provider of  
 10      electric energy services.

11          “(B) ENERGY MANAGEMENT DEVICE.—  
 12      For purposes of subparagraph (A), the term  
 13      ‘energy management device’ means any meter  
 14      or metering device which is used by the tax-  
 15      payer—

16           “(i) to measure and record electricity  
 17           usage data on a time-differentiated basis  
 18           in at least 4 separate time segments per  
 19           day, and

20           “(ii) to provide such data on at least  
 21           a monthly basis to both consumers and the  
 22           taxpayer.”.

23          (c) ALTERNATIVE SYSTEM.—The table contained in  
 24      section 168(g)(3)(B) is amended by inserting after the  
 25      item relating to subparagraph (A)(iii) the following:

“(A)(iv) ..... 20”.

1 (d) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to property placed in service after  
 3 December 31, 2004, in taxable years ending after such  
 4 date.

5 **SEC. 827. THREE-YEAR APPLICABLE RECOVERY PERIOD**  
 6 **FOR DEPRECIATION OF QUALIFIED WATER**  
 7 **SUBMETERING DEVICES.**

8 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-  
 9 year property), as amended by this Act, is amended by  
 10 striking “and” at the end of clause (iii), by striking the  
 11 period at the end of clause (iv) and inserting “, and”, and  
 12 by adding at the end the following new clause:

13 “(v) any qualified water submetering  
 14 device.”.

15 (b) DEFINITION OF QUALIFIED WATER SUB-  
 16 METERING DEVICE.—Section 168(i) (relating to defini-  
 17 tions and special rules), as amended by this Act, is amend-  
 18 ed by inserting at the end the following new paragraph:

19 “(16) QUALIFIED WATER SUBMETERING DE-  
 20 VICE.—

21 “(A) IN GENERAL.—The term ‘qualified  
 22 water submetering device’ means any water  
 23 submetering device which is placed in service  
 24 before January 1, 2008, by a taxpayer who is



1 an eligible resupplier with respect to the unit  
 2 for which the device is placed in service.

3 “(B) WATER SUBMETERING DEVICE.—For  
 4 purposes of this paragraph, the term ‘water  
 5 submetering device’ means any submetering de-  
 6 vice which is used by the taxpayer—

7 “(i) to measure and record water  
 8 usage data, and

9 “(ii) to provide such data on at least  
 10 a monthly basis to both consumers and the  
 11 taxpayer.

12 “(C) ELIGIBLE RESUPPLIER.—For pur-  
 13 poses of subparagraph (A), the term ‘eligible re-  
 14 supplier’ means any taxpayer who purchases  
 15 and installs qualified water submetering devices  
 16 in every unit in any multi-unit property.”.

17 (c) ALTERNATIVE SYSTEM.—The table contained in  
 18 section 168(g)(3)(B), as amended by this Act, is amended  
 19 by inserting after the item relating to subparagraph  
 20 (A)(iv) the following:

“(A)(v) ..... 20”.

21 (d) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to property placed in service after  
 23 December 31, 2004, in taxable years ending after such  
 24 date.

1 **SEC. 828. ENERGY CREDIT FOR COMBINED HEAT AND**  
 2 **POWER SYSTEM PROPERTY.**

3 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-  
 4 ergy property), as amended by this Act, is amended by  
 5 striking “or” at the end of clause (ii), by adding “or” at  
 6 the end of clause (iii), and by inserting after clause (iii)  
 7 the following new clause:

8 “(iv) combined heat and power system  
 9 property,”.

10 (b) COMBINED HEAT AND POWER SYSTEM PROP-  
 11 erty.—Section 48 (relating to energy credit; reforestation  
 12 credit), as amended by this Act, is amended by adding  
 13 at the end the following new subsection:

14 “(d) COMBINED HEAT AND POWER SYSTEM PROP-  
 15 erty.—For purposes of subsection (a)(3)(A)(iv)—

16 “(1) COMBINED HEAT AND POWER SYSTEM  
 17 PROPERTY.—The term ‘combined heat and power  
 18 system property’ means property comprising a sys-  
 19 tem—

20 “(A) which uses the same energy source  
 21 for the simultaneous or sequential generation of  
 22 electrical power, mechanical shaft power, or  
 23 both, in combination with the generation of  
 24 steam or other forms of useful thermal energy  
 25 (including heating and cooling applications),

1 “(B) which has an electrical capacity of  
2 not more than 15 megawatts or a mechanical  
3 energy capacity of not more than 2,000 horse-  
4 power or an equivalent combination of electrical  
5 and mechanical energy capacities,

6 “(C) which produces—

7 “(i) at least 20 percent of its total  
8 useful energy in the form of thermal en-  
9 ergy which is not used to produce electrical  
10 or mechanical power (or combination  
11 thereof), and

12 “(ii) at least 20 percent of its total  
13 useful energy in the form of electrical or  
14 mechanical power (or combination thereof),

15 “(D) the energy efficiency percentage of  
16 which exceeds 60 percent, and

17 “(E) which is placed in service before Jan-  
18 uary 1, 2007.

19 “(2) SPECIAL RULES.—

20 “(A) ENERGY EFFICIENCY PERCENT-  
21 AGE.—For purposes of this subsection, the en-  
22 ergy efficiency percentage of a system is the  
23 fraction—

24 “(i) the numerator of which is the  
25 total useful electrical, thermal, and me-

1           chanical power produced by the system at  
2           normal operating rates, and expected to be  
3           consumed in its normal application, and

4           “(ii) the denominator of which is the  
5           lower heating value of the fuel sources for  
6           the system.

7           “(B) DETERMINATIONS MADE ON BTU  
8           BASIS.—The energy efficiency percentage and  
9           the percentages under paragraph (1)(C) shall  
10          be determined on a Btu basis.

11          “(C) INPUT AND OUTPUT PROPERTY NOT  
12          INCLUDED.—The term ‘combined heat and  
13          power system property’ does not include prop-  
14          erty used to transport the energy source to the  
15          facility or to distribute energy produced by the  
16          facility.

17          “(D) PUBLIC UTILITY PROPERTY.—

18                 “(i) ACCOUNTING RULE FOR PUBLIC  
19                 UTILITY PROPERTY.—If the combined heat  
20                 and power system property is public utility  
21                 property (as defined in section 168(i)(10)),  
22                 the taxpayer may only claim the credit  
23                 under subsection (a) if, with respect to  
24                 such property, the taxpayer uses a normal-  
25                 ization method of accounting.

1                   “(ii) CERTAIN EXCEPTION NOT TO  
2                   APPLY.—The matter in subsection (a)(3)  
3                   which follows subparagraph (D) thereof  
4                   shall not apply to combined heat and  
5                   power system property.

6                   “(3) SYSTEMS USING BAGASSE.—If a system is  
7                   designed to use bagasse for at least 90 percent of  
8                   the energy source—

9                   “(A) paragraph (1)(D) shall not apply, but

10                  “(B) the amount of credit determined  
11                  under subsection (a) with respect to such sys-  
12                  tem shall not exceed the amount which bears  
13                  the same ratio to such amount of credit (deter-  
14                  mined without regard to this paragraph) as the  
15                  energy efficiency percentage of such system  
16                  bears to 60 percent.”.

17                  (c) EFFECTIVE DATE.—The amendments made by  
18                  this subsection shall apply to periods after December 31,  
19                  2004, in taxable years ending after such date, under rules  
20                  similar to the rules of section 48(m) of the Internal Rev-  
21                  enue Code of 1986 (as in effect on the day before the date  
22                  of the enactment of the Revenue Reconciliation Act of  
23                  1990).

1 **SEC. 829. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**  
2 **MENTS TO EXISTING HOMES.**

3 (a) IN GENERAL.—Subpart A of part IV of sub-  
4 chapter A of chapter 1 (relating to nonrefundable personal  
5 credits), as amended by this Act, is amended by inserting  
6 after section 25C the following new section:

7 **“SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**  
8 **ING HOMES.**

9 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
10 dividual, there shall be allowed as a credit against the tax  
11 imposed by this chapter for the taxable year an amount  
12 equal to 10 percent of the amount paid or incurred by  
13 the taxpayer for qualified energy efficiency improvements  
14 installed during such taxable year.

15 “(b) LIMITATION.—The credit allowed by this section  
16 with respect to a dwelling for any taxable year shall not  
17 exceed \$300, reduced (but not below zero) by the sum of  
18 the credits allowed under subsection (a) to the taxpayer  
19 with respect to the dwelling for all preceding taxable years.

20 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the  
21 credit allowable under subsection (a) exceeds the limita-  
22 tion imposed by section 26(a) for such taxable year re-  
23 duced by the sum of the credits allowable under this sub-  
24 part (other than this section) for such taxable year, such  
25 excess shall be carried to the succeeding taxable year and

1 added to the credit allowable under subsection (a) for such  
 2 succeeding taxable year.

3       “(d) QUALIFIED ENERGY EFFICIENCY IMPROVE-  
 4 MENTS.—For purposes of this section, the term ‘qualified  
 5 energy efficiency improvements’ means any energy effi-  
 6 cient building envelope component which is certified to  
 7 meet or exceed the latest prescriptive criteria for such  
 8 component in the International Energy Conservation Code  
 9 approved by the Department of Energy before the installa-  
 10 tion of such component, or any combination of energy effi-  
 11 ciency measures which are certified as achieving at least  
 12 a 30 percent reduction in heating and cooling energy  
 13 usage for the dwelling (as measured in terms of energy  
 14 cost to the taxpayer), if—

15               “(1) such component or combination of meas-  
 16 ures is installed in or on a dwelling which—

17                       “(A) is located in the United States,

18                       “(B) has not been treated as a qualifying  
 19 new home for purposes of any credit allowed  
 20 under section 45K, and

21                       “(C) is owned and used by the taxpayer as  
 22 the taxpayer’s principal residence (within the  
 23 meaning of section 121),

1           “(2) the original use of such component or com-  
 2           bination of measures commences with the taxpayer,  
 3           and

4           “(3) such component or combination of meas-  
 5           ures reasonably can be expected to remain in use for  
 6           at least 5 years.

7           “(e) CERTIFICATION.—

8           “(1) METHODS OF CERTIFICATION.—

9           “(A) COMPONENT-BASED METHOD.—The  
 10          certification described in subsection (d) for any  
 11          component described in such subsection shall be  
 12          determined on the basis of applicable energy ef-  
 13          ficiency ratings (including product labeling re-  
 14          quirements) for affected building envelope com-  
 15          ponents.

16          “(B) PERFORMANCE-BASED METHOD.—

17          “(i) IN GENERAL.—The certification  
 18          described in subsection (d) for any com-  
 19          bination of measures described in such  
 20          subsection shall be—

21                  “(I) determined by comparing  
 22                  the projected heating and cooling en-  
 23                  ergy usage for the dwelling to such  
 24                  usage for such dwelling in its original  
 25                  condition, and



1                   “(II) accompanied by a written  
2                   analysis documenting the proper ap-  
3                   plication of a permissible energy per-  
4                   formance calculation method to the  
5                   specific circumstances of such dwell-  
6                   ing.

7                   “(ii) COMPUTER SOFTWARE.—Com-  
8                   puter software shall be used in support of  
9                   a performance-based method certification  
10                  under clause (i). Such software shall meet  
11                  procedures and methods for calculating en-  
12                  ergy and cost savings in regulations pro-  
13                  mulgated by the Secretary of Energy.

14                  “(2) PROVIDER.—A certification described in  
15                  subsection (d) shall be provided by—

16                   “(A) in the case of the method described  
17                   in paragraph (1)(A), a third party, such as a  
18                   local building regulatory authority, a utility, a  
19                   manufactured home primary inspection agency,  
20                   or a home energy rating organization, or

21                   “(B) in the case of the method described  
22                   in paragraph (1)(B), an individual recognized  
23                   by an organization designated by the Secretary  
24                   for such purposes.

1           “(3) FORM.—A certification described in sub-  
2           section (d) shall be made in writing on forms which  
3           specify in readily inspectable fashion the energy effi-  
4           cient components and other measures and their re-  
5           spective efficiency ratings, and which include a per-  
6           manent label affixed to the electrical distribution  
7           panel of the dwelling.

8           “(4) REGULATIONS.—

9           “(A) IN GENERAL.—In prescribing regula-  
10          tions under this subsection for certification  
11          methods described in paragraph (1)(B), the  
12          Secretary, after examining the requirements for  
13          energy consultants and home energy ratings  
14          providers specified by the Mortgage Industry  
15          National Home Energy Rating Standards, shall  
16          prescribe procedures for calculating annual en-  
17          ergy usage and cost reductions for heating and  
18          cooling and for the reporting of the results.  
19          Such regulations shall—

20               “(i) provide that any calculation pro-  
21               cedures be fuel neutral such that the same  
22               energy efficiency measures allow a dwelling  
23               to be eligible for the credit under this sec-  
24               tion regardless of whether such dwelling

1           uses a gas or oil furnace or boiler or an  
2           electric heat pump, and

3           “(ii) require that any computer soft-  
4           ware allow for the printing of the Federal  
5           tax forms necessary for the credit under  
6           this section and for the printing of forms  
7           for disclosure to the owner of the dwelling.

8           “(B) PROVIDERS.—For purposes of para-  
9           graph (2)(B), the Secretary shall establish re-  
10          quirements for the designation of individuals  
11          based on the requirements for energy consult-  
12          ants and home energy raters specified by the  
13          Mortgage Industry National Home Energy Rat-  
14          ing Standards.

15          “(f) DEFINITIONS AND SPECIAL RULES.—For pur-  
16          poses of this section—

17               “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
18          CUPANCY.—In the case of any dwelling unit which is  
19          jointly occupied and used during any calendar year  
20          as a residence by 2 or more individuals the following  
21          rules shall apply:

22               “(A) The amount of the credit allowable  
23          under subsection (a) by reason of expenditures  
24          for the qualified energy efficiency improvements  
25          made during such calendar year by any of such

1 individuals with respect to such dwelling unit  
2 shall be determined by treating all of such indi-  
3 viduals as 1 taxpayer whose taxable year is  
4 such calendar year.

5 “(B) There shall be allowable, with respect  
6 to such expenditures to each of such individ-  
7 uals, a credit under subsection (a) for the tax-  
8 able year in which such calendar year ends in  
9 an amount which bears the same ratio to the  
10 amount determined under subparagraph (A) as  
11 the amount of such expenditures made by such  
12 individual during such calendar year bears to  
13 the aggregate of such expenditures made by all  
14 of such individuals during such calendar year.

15 “(2) TENANT-STOCKHOLDER IN COOPERATIVE  
16 HOUSING CORPORATION.—In the case of an indi-  
17 vidual who is a tenant-stockholder (as defined in sec-  
18 tion 216) in a cooperative housing corporation (as  
19 defined in such section), such individual shall be  
20 treated as having paid his tenant-stockholder’s pro-  
21 portionate share (as defined in section 216(b)(3)) of  
22 the cost of qualified energy efficiency improvements  
23 made by such corporation.

24 “(3) CONDOMINIUMS.—

1           “(A) IN GENERAL.—In the case of an indi-  
2           vidual who is a member of a condominium man-  
3           agement association with respect to a condo-  
4           minium which the individual owns, such indi-  
5           vidual shall be treated as having paid the indi-  
6           vidual’s proportionate share of the cost of quali-  
7           fied energy efficiency improvements made by  
8           such association.

9           “(B) CONDOMINIUM MANAGEMENT ASSO-  
10          CIATION.—For purposes of this paragraph, the  
11          term ‘condominium management association’  
12          means an organization which meets the require-  
13          ments of paragraph (1) of section 528(c) (other  
14          than subparagraph (E) thereof) with respect to  
15          a condominium project substantially all of the  
16          units of which are used as residences.

17          “(4) BUILDING ENVELOPE COMPONENT.—The  
18          term ‘building envelope component’ means—

19               “(A) any insulation material or system  
20               which is specifically and primarily designed to  
21               reduce the heat loss or gain of a dwelling when  
22               installed in or on such dwelling,

23               “(B) exterior windows (including sky-  
24               lights), and

25               “(C) exterior doors.

1           “(5) MANUFACTURED HOMES INCLUDED.—For  
 2           purposes of this section, the term ‘dwelling’ includes  
 3           a manufactured home which conforms to Federal  
 4           Manufactured Home Construction and Safety Stand-  
 5           ards (24 C.F.R. 3280).

6           “(g) BASIS ADJUSTMENT.—For purposes of this sub-  
 7           title, if a credit is allowed under this section for any ex-  
 8           penditure with respect to any property, the increase in the  
 9           basis of such property which would (but for this sub-  
 10          section) result from such expenditure shall be reduced by  
 11          the amount of the credit so allowed.

12          “(h) TERMINATION.—Subsection (a) shall not apply  
 13          to qualified energy efficiency improvements installed after  
 14          December 31, 2006.”.

15          (b) CREDIT ALLOWED AGAINST REGULAR TAX AND  
 16          ALTERNATIVE MINIMUM TAX.—

17               (1) IN GENERAL.—Section 25D(b), as added by  
 18          subsection (a), is amended—

19                       (A) by striking “The credit” and inserting  
 20                       the following:

21                       “(1) DOLLAR AMOUNT.—The credit”, and

22                       (B) by adding at the end the following new  
 23                       paragraph:

1           “(2) LIMITATION BASED ON AMOUNT OF  
2           TAX.—The credit allowed under subsection (a) for  
3           the taxable year shall not exceed the excess of—

4                   “(A) the sum of the regular tax liability  
5                   (as defined in section 26(b)) plus the tax im-  
6                   posed by section 55, over

7                   “(B) the sum of the credits allowable  
8                   under this subpart (other than this section) and  
9                   section 27 for the taxable year.”.

10          (2) CONFORMING AMENDMENTS.—

11               (A) Section 25D(c), as added by subsection  
12               (a), is amended by striking “section 26(a) for  
13               such taxable year reduced by the sum of the  
14               credits allowable under this subpart (other than  
15               this section)” and inserting “subsection (b)(2)”.

16               (B) Section 23(b)(4)(B), as amended by  
17               this Act, is amended by striking “section 25C”  
18               and inserting “sections 25C and 25D”.

19               (C) Section 24(b)(3)(B), as amended by  
20               this Act, is amended by striking “and 25C” and  
21               inserting “25C, and 25D”.

22               (D) Section 25(e)(1)(C), as amended by  
23               this Act, is amended by inserting “25D,” after  
24               “25C,”.

1 (E) Section 25B(g)(2), as amended by this  
 2 Act, is amended by striking “23 and 25C” and  
 3 inserting “23, 25C, and 25D”.

4 (F) Section 26(a)(1), as amended by this  
 5 Act, is amended by striking “and 25C” and in-  
 6 serting “25C, and 25D”.

7 (G) Section 904(i), as redesignated and  
 8 amended by this Act, is amended by striking  
 9 “and 25C” and inserting “25C, and 25D”.

10 (H) Section 1400C(d), as amended by this  
 11 Act, is amended by striking “and 25C” and in-  
 12 serting “25C, and 25D”.

13 (c) ADDITIONAL CONFORMING AMENDMENTS.—

14 (1) Section 1016(a), as amended by this Act, is  
 15 amended by striking “and” at the end of paragraph  
 16 (35), by striking the period at the end of paragraph  
 17 (36) and inserting “; and”, and by adding at the  
 18 end the following new paragraph:

19 “(37) to the extent provided in section 25D(g),  
 20 in the case of amounts with respect to which a credit  
 21 has been allowed under section 25D.”.

22 (2) The table of sections for subpart A of part  
 23 IV of subchapter A of chapter 1, as amended by this  
 24 Act, is amended by inserting after the item relating  
 25 to section 25C the following new item:

“Sec. 25D. Energy efficiency improvements to existing homes.”.



1 (d) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as provided by para-  
 3 graph (2), the amendments made by this section  
 4 shall apply to property installed after December 31,  
 5 2004, in taxable years ending after such date.

6 (2) SUBSECTION (b).—The amendments made  
 7 by subsection (b) shall apply to taxable years begin-  
 8 ning after December 31, 2004.

## 9 **Subtitle D—Clean Coal Incentives**

### 10 **PART I—CREDIT FOR EMISSION REDUCTIONS** 11 **AND EFFICIENCY IMPROVEMENTS IN EXIST-** 12 **ING COAL-BASED ELECTRICITY GENERATION** 13 **FACILITIES**

#### 14 **SEC. 831. CREDIT FOR PRODUCTION FROM A QUALIFYING** 15 **CLEAN COAL TECHNOLOGY UNIT.**

16 (a) CREDIT FOR PRODUCTION FROM A QUALIFYING  
 17 CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV  
 18 of subchapter A of chapter 1 (relating to business related  
 19 credits), as amended by this Act, is amended by adding  
 20 at the end the following new section:

#### 21 **“SEC. 45M. CREDIT FOR PRODUCTION FROM A QUALIFYING** 22 **CLEAN COAL TECHNOLOGY UNIT.**

23 “(a) GENERAL RULE.—For purposes of section 38,  
 24 the qualifying clean coal technology production credit of  
 25 any taxpayer for any taxable year is equal to—

1           “(1) the applicable amount of clean coal tech-  
2           nology production credit, multiplied by

3           “(2) the applicable percentage of the sum of—

4                 “(A) the kilowatt hours of electricity, plus

5                 “(B) each 3,413 Btu of fuels or chemicals,  
6           produced by the taxpayer during such taxable year  
7           at a qualifying clean coal technology unit, but only  
8           if such production occurs during the 10-year period  
9           beginning on the date the unit was returned to serv-  
10          ice after becoming a qualifying clean coal technology  
11          unit.

12          “(b) APPLICABLE AMOUNT.—

13                 “(1) IN GENERAL.—For purposes of this sec-  
14                 tion, the applicable amount of clean coal technology  
15                 production credit is equal to \$0.0034.

16                 “(2) INFLATION ADJUSTMENT.—For calendar  
17                 years after 2005, the applicable amount of clean coal  
18                 technology production credit shall be adjusted by  
19                 multiplying such amount by the inflation adjustment  
20                 factor for the calendar year in which the amount is  
21                 applied. If any amount as increased under the pre-  
22                 ceding sentence is not a multiple of 0.01 cent, such  
23                 amount shall be rounded to the nearest multiple of  
24                 0.01 cent.

1       “(c) APPLICABLE PERCENTAGE.—For purposes of  
2 this section, with respect to any qualifying clean coal tech-  
3 nology unit, the applicable percentage is the percentage  
4 equal to the ratio which the portion of the national mega-  
5 watt capacity limitation allocated to the taxpayer with re-  
6 spect to such unit under subsection (e) bears to the total  
7 megawatt capacity of such unit.

8       “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
9 poses of this section—

10           “(1) QUALIFYING CLEAN COAL TECHNOLOGY  
11 UNIT.—The term ‘qualifying clean coal technology  
12 unit’ means a clean coal technology unit of the tax-  
13 payer which—

14                   “(A) on January 1, 2005—

15                           “(i) was a coal-based electricity gener-  
16 ating steam generator-turbine unit which  
17 was not a clean coal technology unit, and

18                           “(ii) had a nameplate capacity rating  
19 of not more than 300 megawatts,

20                   “(B) becomes a clean coal technology unit  
21 as the result of the retrofitting, repowering, or  
22 replacement of the unit with clean coal tech-  
23 nology during the 10-year period beginning on  
24 January 1, 2005,

1           “(C) is not receiving nor is scheduled to  
2           receive funding under the Clean Coal Tech-  
3           nology Program, the Power Plant Improvement  
4           Initiative, or the Clean Coal Power Initiative  
5           administered by the Secretary of Energy, and

6           “(D) receives an allocation of a portion of  
7           the national megawatt capacity limitation under  
8           subsection (e).

9           “(2) CLEAN COAL TECHNOLOGY UNIT.—The  
10          term ‘clean coal technology unit’ means a unit  
11          which—

12           “(A) uses clean coal technology, including  
13           advanced pulverized coal or atmospheric fluid-  
14           ized bed combustion, pressurized fluidized bed  
15           combustion, integrated gasification combined  
16           cycle, or any other technology, for the produc-  
17           tion of electricity,

18           “(B) uses an input of at least 75 percent  
19           coal to produce at least 50 percent of its ther-  
20           mal output as electricity,

21           “(C) has a design net heat rate of at least  
22           500 less than that of such unit as described in  
23           paragraph (1)(A),

24           “(D) has a maximum design net heat rate  
25           of not more than 9,500, and

1           “(E) meets the pollution control require-  
2           ments of paragraph (3).

3           “(3) POLLUTION CONTROL REQUIREMENTS.—

4           “(A) IN GENERAL.—A unit meets the re-  
5           quirements of this paragraph if—

6           “(i) its emissions of sulfur dioxide, ni-  
7           trogen oxide, or particulates meet the  
8           lower of the emission levels for each such  
9           emission specified in—

10           “(I) subparagraph (B), or

11           “(II) the new source performance  
12           standards of the Clean Air Act (42  
13           U.S.C. 7411) which are in effect for  
14           the category of source at the time of  
15           the retrofitting, repowering, or re-  
16           placement of the unit, and

17           “(ii) its emissions do not exceed any  
18           relevant emission level specified by regula-  
19           tion pursuant to the hazardous air pollut-  
20           ant requirements of the Clean Air Act (42  
21           U.S.C. 7412) in effect at the time of the  
22           retrofitting, repowering, or replacement.

23           “(B) SPECIFIC LEVELS.—The levels speci-  
24           fied in this subparagraph are—

1 “(i) in the case of sulfur dioxide emis-  
2 sions, 50 percent of the sulfur dioxide  
3 emission levels specified in the new source  
4 performance standards of the Clean Air  
5 Act (42 U.S.C. 7411) in effect on the date  
6 of the enactment of this section for the  
7 category of source,

8 “(ii) in the case of nitrogen oxide  
9 emissions—

10 “(I) 0.1 pound per million Btu of  
11 heat input if the unit is not a cyclone-  
12 fired boiler, and

13 “(II) if the unit is a cyclone-fired  
14 boiler, 15 percent of the uncontrolled  
15 nitrogen oxide emissions from such  
16 boilers, and

17 “(iii) in the case of particulate emis-  
18 sions, 0.02 pound per million Btu of heat  
19 input.

20 “(4) DESIGN NET HEAT RATE.—The design net  
21 heat rate with respect to any unit, measured in Btu  
22 per kilowatt hour (HHV)—

23 “(A) shall be based on the design annual  
24 heat input to and the design annual net elec-  
25 trical power, fuels, and chemicals output from

1           such unit (determined without regard to such  
2           unit's co-generation of steam),

3           “(B) shall be adjusted for the heat content  
4           of the design coal to be used by the unit if it  
5           is less than 12,000 Btu per pound according to  
6           the following formula:

7           Design net heat rate = Unit net heat rate  $\times$  [1 –  
8           {((12,000-design coal heat content, Btu per pound)/  
9           1,000)  $\times$  0.013}],

10           “(C) shall be corrected for the site ref-  
11           erence conditions of—

12                   “(i) elevation above sea level of 500  
13                   feet,

14                   “(ii) air pressure of 14.4 pounds per  
15                   square inch absolute (psia),

16                   “(iii) temperature, dry bulb of 63°F,

17                   “(iv) temperature, wet bulb of 54°F,

18                   and

19                   “(v) relative humidity of 55 percent,

20                   and

21           “(D) if carbon capture controls have been  
22           installed with respect to any qualifying unit and  
23           such controls remove at least 50 percent of the  
24           unit's carbon dioxide emissions, shall be ad-  
25           justed up to the design heat rate level which

1 would have resulted without the installation of  
2 such controls.

3 “(5) HHV.—The term ‘HHV’ means higher  
4 heating value.

5 “(6) APPLICATION OF CERTAIN RULES.—The  
6 rules of paragraphs (3), (4), and (5) of section 45(e)  
7 shall apply.

8 “(7) INFLATION ADJUSTMENT FACTOR.—

9 “(A) IN GENERAL.—The term ‘inflation  
10 adjustment factor’ means, with respect to a cal-  
11 endar year, a fraction the numerator of which  
12 is the GDP implicit price deflator for the pre-  
13 ceding calendar year and the denominator of  
14 which is the GDP implicit price deflator for the  
15 calendar year 2003.

16 “(B) GDP IMPLICIT PRICE DEFLATOR.—  
17 The term ‘GDP implicit price deflator’ means,  
18 for any calendar year, the most recent revision  
19 of the implicit price deflator for the gross do-  
20 mestic product as of June 30 of such calendar  
21 year as computed by the Department of Com-  
22 merce before October 1 of such calendar year.

23 “(8) NONCOMPLIANCE WITH POLLUTION  
24 LAWS.—For purposes of this section, a unit which is  
25 not in compliance with the applicable State and Fed-



1       eral pollution prevention, control, and permit re-  
2       quirements for any period of time shall not be con-  
3       sidered to be a qualifying clean coal technology unit  
4       during such period.

5       “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-  
6       PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY  
7       UNITS.—

8               “(1) IN GENERAL.—For purposes of this sec-  
9       tion, the national megawatt capacity limitation for  
10      qualifying clean coal technology units is 4,000  
11      megawatts.

12             “(2) ALLOCATION OF LIMITATION.—The Sec-  
13      retary shall allocate the national megawatt capacity  
14      limitation for qualifying clean coal technology units  
15      in such manner as the Secretary may prescribe  
16      under the regulations under paragraph (3).

17             “(3) REGULATIONS.—Not later than 6 months  
18      after the date of the enactment of this section, the  
19      Secretary shall prescribe such regulations as may be  
20      necessary or appropriate—

21               “(A) to carry out the purposes of this sub-  
22      section,

23               “(B) to limit the capacity of any qualifying  
24      clean coal technology unit to which this section  
25      applies so that the megawatt capacity allocated

1 to any unit under this subsection does not ex-  
2 ceed 300 megawatts and the combined mega-  
3 watt capacity allocated to all such units when  
4 all such units are placed in service during the  
5 10-year period described in subsection  
6 (d)(1)(B), does not exceed 4,000 megawatts,

7 “(C) to provide a certification process  
8 under which the Secretary, in consultation with  
9 the Secretary of Energy, shall approve and allo-  
10 cate the national megawatt capacity limita-  
11 tion—

12 “(i) to encourage that units with the  
13 highest thermal efficiencies, when adjusted  
14 for the heat content of the design coal and  
15 site reference conditions described in sub-  
16 section (d)(4)(C), and environmental per-  
17 formance, be placed in service as soon as  
18 possible, and

19 “(ii) to allocate capacity to taxpayers  
20 which have a definite and credible plan for  
21 placing into commercial operation a quali-  
22 fying clean coal technology unit, includ-  
23 ing—

24 “(I) a site,

1                   “(II) contractual commitments  
2                   for procurement and construction or,  
3                   in the case of regulated utilities, the  
4                   agreement of the State utility commis-  
5                   sion,

6                   “(III) filings for all necessary  
7                   preconstruction approvals,

8                   “(IV) a demonstrated record of  
9                   having successfully completed com-  
10                  parable projects on a timely basis, and

11                  “(V) such other factors that the  
12                  Secretary determines are appropriate,

13                  “(D) to allocate the national megawatt ca-  
14                  pacity limitation to a portion of the capacity of  
15                  a qualifying clean coal technology unit if the  
16                  Secretary determines that such an allocation  
17                  would maximize the amount of efficient produc-  
18                  tion encouraged with the available tax credits,

19                  “(E) to set progress requirements and con-  
20                  ditional approvals so that capacity allocations  
21                  for clean coal technology units which become  
22                  unlikely to meet the necessary conditions for  
23                  qualifying can be reallocated by the Secretary  
24                  to other clean coal technology units, and

1           “(F) to provide taxpayers with opportuni-  
 2           ties to correct administrative errors and omis-  
 3           sions with respect to allocations and record  
 4           keeping within a reasonable period after dis-  
 5           covery, taking into account the availability of  
 6           regulations and other administrative guidance  
 7           from the Secretary.”.

8           (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 9           tion 38(b) (relating to current year business credit), as  
 10          amended by this Act, is amended by striking “plus” at  
 11          the end of paragraph (23), by striking the period at the  
 12          end of paragraph (24) and inserting “, plus”, and by add-  
 13          ing at the end the following new paragraph:

14           “(25) the qualifying clean coal technology pro-  
 15          duction credit determined under section 45M(a).”.

16          (c) CLERICAL AMENDMENT.—The table of sections  
 17          for subpart D of part IV of subchapter A of chapter 1,  
 18          as amended by this Act, is amended by adding at the end  
 19          the following new item:

“Sec. 45M. Credit for production from a qualifying clean coal technology unit.”.

20          (d) EFFECTIVE DATE.—The amendments made by  
 21          this section shall apply to production after December 31,  
 22          2004, in taxable years ending after such date.

1 **PART II—INCENTIVES FOR EARLY COMMERCIAL**  
 2 **APPLICATIONS OF ADVANCED CLEAN COAL**  
 3 **TECHNOLOGIES**

4 **SEC. 832. CREDIT FOR INVESTMENT IN QUALIFYING AD-**  
 5 **VANCED CLEAN COAL TECHNOLOGY.**

6 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN  
 7 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating  
 8 to amount of credit), as amended by this Act, is amended  
 9 by striking “and” at the end of paragraph (1), by striking  
 10 the period at the end of paragraph (2) and inserting “,  
 11 and”, and by adding at the end the following new para-  
 12 graph:

13 “(3) the qualifying advanced clean coal tech-  
 14 nology unit credit.”.

15 (b) AMOUNT OF QUALIFYING ADVANCED CLEAN  
 16 COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part  
 17 IV of subchapter A of chapter 1 (relating to rules for com-  
 18 puting investment credit) is amended by inserting after  
 19 section 48 the following new section:

20 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-**  
 21 **NOLOGY UNIT CREDIT.**

22 “(a) IN GENERAL.—For purposes of section 46, the  
 23 qualifying advanced clean coal technology unit credit for  
 24 any taxable year is an amount equal to 10 percent of the  
 25 applicable percentage of the qualified investment in a

1 qualifying advanced clean coal technology unit for such  
 2 taxable year.

3 “(b) QUALIFYING ADVANCED CLEAN COAL TECH-  
 4 NOLOGY UNIT.—

5 “(1) IN GENERAL.—For purposes of subsection  
 6 (a), the term ‘qualifying advanced clean coal tech-  
 7 nology unit’ means an advanced clean coal tech-  
 8 nology unit of the taxpayer—

9 “(A)(i) in the case of a unit first placed in  
 10 service after December 31, 2004, the original  
 11 use of which commences with the taxpayer, or

12 “(ii) in the case of the retrofitting or  
 13 repowering of a unit first placed in service be-  
 14 fore January 1, 2005, the retrofitting or  
 15 repowering of which is completed by the tax-  
 16 payer after such date, or

17 “(B) which is depreciable under section  
 18 167,

19 “(C) which has a useful life of not less  
 20 than 4 years,

21 “(D) which is located in the United States,

22 “(E) which is not receiving nor is sched-  
 23 uled to receive funding under the Clean Coal  
 24 Technology Program, the Power Plant Improve-

1           ment Initiative, or the Clean Coal Power Initia-  
2           tive administered by the Secretary of Energy,

3           “(F) which is not a qualifying clean coal  
4           technology unit, and

5           “(G) which receives an allocation of a por-  
6           tion of the national megawatt capacity limita-  
7           tion under subsection (f).

8           “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—  
9           For purposes of subparagraph (A) of paragraph (1),  
10          in the case of a unit which—

11           “(A) is originally placed in service by a  
12          person, and

13           “(B) is sold and leased back by such per-  
14          son, or is leased to such person, within 3  
15          months after the date such unit was originally  
16          placed in service, for a period of not less than  
17          12 years,

18          such unit shall be treated as originally placed in  
19          service not earlier than the date on which such unit  
20          is used under the leaseback (or lease) referred to in  
21          subparagraph (B). The preceding sentence shall not  
22          apply to any property if the lessee and lessor of such  
23          property make an election under this sentence. Such  
24          an election, once made, may be revoked only with  
25          the consent of the Secretary.

1           “(3) NONCOMPLIANCE WITH POLLUTION  
 2       LAWS.—For purposes of this subsection, a unit  
 3       which is not in compliance with the applicable State  
 4       and Federal pollution prevention, control, and per-  
 5       mit requirements for any period of time shall not be  
 6       considered to be a qualifying advanced clean coal  
 7       technology unit during such period.

8           “(c) APPLICABLE PERCENTAGE.—For purposes of  
 9       this section, with respect to any qualifying advanced clean  
 10      coal technology unit, the applicable percentage is the per-  
 11      centage equal to the ratio which the portion of the national  
 12      megawatt capacity limitation allocated to the taxpayer  
 13      with respect to such unit under subsection (f) bears to  
 14      the total megawatt capacity of such unit.

15          “(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—  
 16      For purposes of this section—

17               “(1) IN GENERAL.—The term ‘advanced clean  
 18      coal technology unit’ means a new, retrofit, or  
 19      repowering unit of the taxpayer which—

20                       “(A) is—

21                               “(i) an eligible advanced pulverized  
 22                               coal or atmospheric fluidized bed combus-  
 23                               tion technology unit,

24                               “(ii) an eligible pressurized fluidized  
 25                               bed combustion technology unit,



1 “(iii) an eligible integrated gasifi-  
2 cation combined cycle technology unit, or

3 “(iv) an eligible other technology unit,  
4 and

5 “(B) meets the carbon emission rate re-  
6 quirements of paragraph (6).

7 “(2) ELIGIBLE ADVANCED PULVERIZED COAL  
8 OR ATMOSPHERIC FLUIDIZED BED COMBUSTION  
9 TECHNOLOGY UNIT.—The term ‘eligible advanced  
10 pulverized coal or atmospheric fluidized bed combus-  
11 tion technology unit’ means a clean coal technology  
12 unit using advanced pulverized coal or atmospheric  
13 fluidized bed combustion technology which—

14 “(A) is placed in service after December  
15 31, 2004, and before January 1, 2013, and

16 “(B) has a design net heat rate of not  
17 more than 8,500 (8,900 in the case of units  
18 placed in service before 2009).

19 “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED  
20 COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-  
21 ble pressurized fluidized bed combustion technology  
22 unit’ means a clean coal technology unit using pres-  
23 surized fluidized bed combustion technology which—

24 “(A) is placed in service after December  
25 31, 2004, and before January 1, 2017, and

1           “(B) has a design net heat rate of not  
2           more than 7,720 (8,900 in the case of units  
3           placed in service before 2009, and 8,500 in the  
4           case of units placed in service after 2008 and  
5           before 2013).

6           “(4) ELIGIBLE INTEGRATED GASIFICATION  
7           COMBINED CYCLE TECHNOLOGY UNIT.—The term  
8           ‘eligible integrated gasification combined cycle tech-  
9           nology unit’ means a clean coal technology unit  
10          using integrated gasification combined cycle tech-  
11          nology, with or without fuel or chemical co-produc-  
12          tion, which—

13               “(A) is placed in service after December  
14               31, 2004, and before January 1, 2017,

15               “(B) has a design net heat rate of not  
16               more than 7,720 (8,900 in the case of units  
17               placed in service before 2009, and 8,500 in the  
18               case of units placed in service after 2008 and  
19               before 2013), and

20               “(C) has a net thermal efficiency (HHV)  
21               using coal with fuel or chemical co-production  
22               of not less than 44.2 percent (38.4 percent in  
23               the case of units placed in service before 2009,  
24               and 40.2 percent in the case of units placed in  
25               service after 2008 and before 2013).

1           “(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—

2           The term ‘eligible other technology unit’ means a  
3           clean coal technology unit using any other tech-  
4           nology for the production of electricity which is  
5           placed in service after December 31, 2004, and be-  
6           fore January 1, 2017.

7           “(6) CARBON EMISSION RATE REQUIRE-  
8           MENTS.—

9           “(A) IN GENERAL.—Except as provided in  
10          subparagraph (B), a unit meets the require-  
11          ments of this paragraph if—

12               “(i) in the case of a unit using design  
13               coal with a heat content of not more than  
14               9,000 Btu per pound, the carbon emission  
15               rate is less than 0.60 pound of carbon per  
16               kilowatt hour, and

17               “(ii) in the case of a unit using design  
18               coal with a heat content of more than  
19               9,000 Btu per pound, the carbon emission  
20               rate is less than 0.54 pound of carbon per  
21               kilowatt hour.

22           “(B) ELIGIBLE OTHER TECHNOLOGY  
23          UNIT.—In the case of an eligible other tech-  
24          nology unit, subparagraph (A) shall be applied

1           by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and  
2           ‘0.54’, respectively.

3           “(e) GENERAL DEFINITIONS.—Any term used in this  
4 section which is also used in section 45M shall have the  
5 meaning given such term in section 45M.

6           “(f) NATIONAL LIMITATION ON THE AGGREGATE CA-  
7 PACITY OF ADVANCED CLEAN COAL TECHNOLOGY  
8 UNITS.—

9           “(1) IN GENERAL.—For purposes of subsection  
10 (b)(1)(G), the national megawatt capacity limitation  
11 is—

12                   “(A) for qualifying advanced clean coal  
13 technology units using advanced pulverized coal  
14 or atmospheric fluidized bed combustion tech-  
15 nology, not more than 1,000 megawatts (not  
16 more than 500 megawatts in the case of units  
17 placed in service before 2009),

18                   “(B) for such units using pressurized flu-  
19 idized bed combustion technology, not more  
20 than 500 megawatts (not more than 250  
21 megawatts in the case of units placed in service  
22 before 2009),

23                   “(C) for such units using integrated gasifi-  
24 cation combined cycle technology, with or with-  
25 out fuel or chemical co-production, not more

1           than 2,000 megawatts (not more than 1,000  
2           megawatts in the case of units placed in service  
3           before 2009), and

4                 “(D) for such units using other technology  
5           for the production of electricity, not more than  
6           500 megawatts (not more than 250 megawatts  
7           in the case of units placed in service before  
8           2009).

9                 “(2) ALLOCATION OF LIMITATION.—The Sec-  
10          retary shall allocate the national megawatt capacity  
11          limitation for qualifying advanced clean coal tech-  
12          nology units in such manner as the Secretary may  
13          prescribe under the regulations under paragraph (3).

14                 “(3) REGULATIONS.—Not later than 6 months  
15          after the date of the enactment of this section, the  
16          Secretary shall prescribe such regulations as may be  
17          necessary or appropriate—

18                 “(A) to carry out the purposes of this sub-  
19          section and section 45N,

20                 “(B) to limit the capacity of any qualifying  
21          advanced clean coal technology unit to which  
22          this section applies so that the combined mega-  
23          watt capacity of all such units to which this sec-  
24          tion applies does not exceed 4,000 megawatts,

1           “(C) to provide a certification process de-  
2           scribed in section 45M(e)(3)(C),

3           “(D) to carry out the purposes described  
4           in subparagraphs (D), (E), and (F) of section  
5           45M(e)(3), and

6           “(E) to reallocate capacity which is not al-  
7           located to any technology described in subpara-  
8           graphs (A) through (D) of paragraph (1) be-  
9           cause an insufficient number of qualifying units  
10          request an allocation for such technology, to an-  
11          other technology described in such subpara-  
12          graphs in order to maximize the amount of en-  
13          ergy efficient production encouraged with the  
14          available tax credits.

15          “(4) SELECTION CRITERIA.—For purposes of  
16          this subsection, the selection criteria for allocating  
17          the national megawatt capacity limitation to quali-  
18          fying advanced clean coal technology units—

19               “(A) shall be established by the Secretary  
20               of Energy as part of a competitive solicitation,

21               “(B) shall include primary criteria of min-  
22               imum design net heat rate, maximum design  
23               thermal efficiency, environmental performance,  
24               and lowest cost to the Government, and

1                   “(C) shall include supplemental criteria as  
 2                   determined appropriate by the Secretary of En-  
 3                   ergy.

4           “(g) QUALIFIED INVESTMENT.—For purposes of  
 5 subsection (a), the term ‘qualified investment’ means, with  
 6 respect to any taxable year, the basis of a qualifying ad-  
 7 vanced clean coal technology unit placed in service by the  
 8 taxpayer during such taxable year (in the case of a unit  
 9 described in subsection (b)(1)(A)(ii), only that portion of  
 10 the basis of such unit which is properly attributable to  
 11 the retrofitting or repowering of such unit).

12           “(h) QUALIFIED PROGRESS EXPENDITURES.—

13           “(1) INCREASE IN QUALIFIED INVESTMENT.—  
 14           In the case of a taxpayer who has made an election  
 15           under paragraph (5), the amount of the qualified in-  
 16           vestment of such taxpayer for the taxable year (de-  
 17           termined under subsection (g) without regard to this  
 18           subsection) shall be increased by an amount equal to  
 19           the aggregate of each qualified progress expenditure  
 20           for the taxable year with respect to progress expend-  
 21           iture property.

22           “(2) PROGRESS EXPENDITURE PROPERTY DE-  
 23           FINED.—For purposes of this subsection, the term  
 24           ‘progress expenditure property’ means any property  
 25           being constructed by or for the taxpayer and which

1       it is reasonable to believe will qualify as a qualifying  
 2       advanced clean coal technology unit which is being  
 3       constructed by or for the taxpayer when it is placed  
 4       in service.

5               “(3) QUALIFIED PROGRESS EXPENDITURES DE-  
 6       FINED.—For purposes of this subsection—

7               “(A) SELF-CONSTRUCTED PROPERTY.—In  
 8       the case of any self-constructed property, the  
 9       term ‘qualified progress expenditures’ means  
 10      the amount which, for purposes of this subpart,  
 11      is properly chargeable (during such taxable  
 12      year) to capital account with respect to such  
 13      property.

14              “(B) NONSELF-CONSTRUCTED PROP-  
 15      ERTY.—In the case of nonself-constructed prop-  
 16      erty, the term ‘qualified progress expenditures’  
 17      means the amount paid during the taxable year  
 18      to another person for the construction of such  
 19      property.

20              “(4) OTHER DEFINITIONS.—For purposes of  
 21      this subsection—

22              “(A) SELF-CONSTRUCTED PROPERTY.—  
 23      The term ‘self-constructed property’ means  
 24      property for which it is reasonable to believe



1           that more than half of the construction expendi-  
2           tures will be made directly by the taxpayer.

3           “(B)    NONSELF-CONSTRUCTED    PROP-  
4           PERTY.—The term ‘nonself-constructed property’  
5           means property which is not self-constructed  
6           property.

7           “(C)    CONSTRUCTION,   ETC.—The   term  
8           ‘construction’ includes reconstruction and erec-  
9           tion, and the term ‘constructed’ includes recon-  
10          structed and erected.

11          “(D)    ONLY CONSTRUCTION OF QUALI-  
12          FYING ADVANCED CLEAN COAL TECHNOLOGY  
13          UNIT TO BE TAKEN INTO ACCOUNT.—Construc-  
14          tion shall be taken into account only if, for pur-  
15          poses of this subpart, expenditures therefor are  
16          properly chargeable to capital account with re-  
17          spect to the property.

18          “(5)   ELECTION.—An election under this sub-  
19          section may be made at such time and in such man-  
20          ner as the Secretary may by regulations prescribe.  
21          Such an election shall apply to the taxable year for  
22          which made and to all subsequent taxable years.  
23          Such an election, once made, may not be revoked ex-  
24          cept with the consent of the Secretary.

1       “(i) COORDINATION WITH OTHER CREDITS.—This  
 2 section shall not apply to any property with respect to  
 3 which the rehabilitation credit under section 47 or the en-  
 4 ergy credit under section 48 is allowed unless the taxpayer  
 5 elects to waive the application of such credit to such prop-  
 6 erty.”.

7       (c) RECAPTURE.—Section 50(a) (relating to other  
 8 special rules) is amended by adding at the end the fol-  
 9 lowing new paragraph:

10           “(6) SPECIAL RULES RELATING TO QUALIFYING  
 11       ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For  
 12       purposes of applying this subsection in the case of  
 13       any credit allowable by reason of section 48A, the  
 14       following rules shall apply:

15           “(A) GENERAL RULE.—In lieu of the  
 16       amount of the increase in tax under paragraph  
 17       (1), the increase in tax shall be an amount  
 18       equal to the investment tax credit allowed under  
 19       section 38 for all prior taxable years with re-  
 20       spect to a qualifying advanced clean coal tech-  
 21       nology unit (as defined by section 48A(b)(1))  
 22       multiplied by a fraction the numerator of which  
 23       is the number of years remaining to fully depre-  
 24       ciate under this title the qualifying advanced  
 25       clean coal technology unit disposed of, and the

denominator of which is the total number of years over which such unit would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the qualifying advanced clean coal technology unit shall be treated as a year of remaining depreciation.

“(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

“(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.”.

(d) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking “and” at the end of clause (ii), by striking the pe-

1 riod at the end of clause (iii) and inserting “, and”,  
 2 and by adding at the end the following new clause:

3 “(iv) the portion of the basis of any  
 4 qualifying advanced clean coal technology  
 5 unit attributable to any qualified invest-  
 6 ment (as defined by section 48A(g)).”.

7 (2) Section 50(a)(4) is amended by striking  
 8 “and (2)” and inserting “, (2), and (6)”.

9 (3) Section 50(c) is amended by adding at the  
 10 end the following new paragraph:

11 “(6) NONAPPLICATION.—Paragraphs (1) and  
 12 (2) shall not apply to any qualifying advanced clean  
 13 coal technology unit credit under section 48A.”.

14 (4) The table of sections for subpart E of part  
 15 IV of subchapter A of chapter 1 is amended by in-  
 16 serting after the item relating to section 48 the fol-  
 17 lowing new item:

“Sec. 48A. Qualifying advanced clean coal technology unit credit.”.

18 (e) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to periods after December 31,  
 20 2004, under rules similar to the rules of section 48(m)  
 21 of the Internal Revenue Code of 1986 (as in effect on the  
 22 day before the date of the enactment of the Revenue Rec-  
 23 onciliation Act of 1990).

1 **SEC. 833. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 2 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 (relating to business related cred-  
 5 its), as amended by this Act, is amended by adding at  
 6 the end the following new section:

7 **“SEC. 45N. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 8 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

9 “(a) GENERAL RULE.—For purposes of section 38,  
 10 the qualifying advanced clean coal technology production  
 11 credit of any taxpayer for any taxable year is equal to—

12 “(1) the applicable amount of advanced clean  
 13 coal technology production credit, multiplied by

14 “(2) the applicable percentage (as determined  
 15 under section 48A(c)) of the sum of—

16 “(A) the kilowatt hours of electricity, plus

17 “(B) each 3,413 Btu of fuels or chemicals,  
 18 produced by the taxpayer during such taxable year  
 19 at a qualifying advanced clean coal technology unit,  
 20 but only if such production occurs during the 10-  
 21 year period beginning on the date the unit was origi-  
 22 nally placed in service (or returned to service after  
 23 becoming a qualifying advanced clean coal tech-  
 24 nology unit).

25 “(b) APPLICABLE AMOUNT.—For purposes of this  
 26 section—

1           “(1) IN GENERAL.—Except as provided in para-  
 2           graph (2), the applicable amount of advanced clean  
 3           coal technology production credit with respect to  
 4           production from a qualifying advanced clean coal  
 5           technology unit shall be determined as follows:

6           “(A) If the qualifying advanced clean coal  
 7           technology unit is producing electricity only:

8           “(i) In the case of a unit originally  
 9           placed in service before 2009, if—

| “The design net heat rate is:                 | The applicable amount is:             |                                   |
|---|---------------------------------------|-----------------------------------|
|   | For 1st 5<br>years of such<br>service | For 2d 5 years<br>of such service |
| Not more than 8,500 .....                     | \$.0060                               | \$.0038                           |
| More than 8,500 but not more than 8,750 ..... | \$.0025                               | \$.0010                           |
| More than 8,750 but less than 8,900 .....     | \$.0010                               | \$.0010.                          |

10           “(ii) In the case of a unit originally  
 11           placed in service after 2008 and before  
 12           2013, if—

| “The design net heat rate is:                 | The applicable amount is:             |                                   |
|---|---------------------------------------|-----------------------------------|
|   | For 1st 5<br>years of such<br>service | For 2d 5 years<br>of such service |
| Not more than 7,770 .....                     | \$.0105                               | \$.0090                           |
| More than 7,770 but not more than 8,125 ..... | \$.0085                               | \$.0068                           |
| More than 8,125 but less than 8,500 .....     | \$.0075                               | \$.0055.                          |

13           “(iii) In the case of a unit originally  
 14           placed in service after 2012 and before  
 15           2017, if—

| “The design net heat rate is:                 | The applicable amount is:             |                                   |
|---|---------------------------------------|-----------------------------------|
|   | For 1st 5<br>years of such<br>service | For 2d 5 years<br>of such service |
| Not more than 7,380 .....                     | \$.0140                               | \$.0115                           |
| More than 7,380 but not more than 7,720 ..... | \$.0120                               | \$.0090.                          |

1 “(B) If the qualifying advanced clean coal  
2 technology unit is producing fuel or chemicals:

3 “(i) In the case of a unit originally  
4 placed in service before 2009, if—

| “The unit design net thermal efficiency (HHV) is: | The applicable amount is:             |                                   |
|---|---------------------------------------|-----------------------------------|
|   | For 1st 5<br>years of such<br>service | For 2d 5 years<br>of such service |
| Not less than 40.2 percent .....                  | \$.0060                               | \$.0038                           |
| Less than 40.2 but not less than 39 percent ..... | \$.0025                               | \$.0010                           |
| Less than 39 but not less than 38.4 percent ..... | \$.0010                               | \$.0010.                          |

5 “(ii) In the case of a unit originally  
6 placed in service after 2008 and before  
7 2013, if—

| “The unit design net thermal efficiency (HHV) is: | The applicable amount is:             |                                   |
|---|---------------------------------------|-----------------------------------|
|   | For 1st 5<br>years of such<br>service | For 2d 5 years<br>of such service |
| Not less than 43.9 percent .....                  | \$.0105                               | \$.0090                           |
| Less than 43.9 but not less than 42 percent ..... | \$.0085                               | \$.0068                           |
| Less than 42 but not less than 40.2 percent ..... | \$.0075                               | \$.0055.                          |

8 “(iii) In the case of a unit originally  
9 placed in service after 2012 and before  
10 2017, if—

| “The unit design net thermal efficiency (HHV) is:   | The applicable amount is:             |                                   |
|---|---------------------------------------|-----------------------------------|
|   | For 1st 5<br>years of such<br>service | For 2d 5 years<br>of such service |
| Not less than 46.3 percent .....                    | \$.0140                               | \$.0115                           |
| Less than 46.3 but not less than 44.2 percent ..... | \$.0120                               | \$.0090.                          |

11 “(2) SPECIAL RULE FOR UNITS QUALIFYING  
12 FOR GREATER APPLICABLE AMOUNT WHEN PLACED  
13 IN SERVICE.—If, at the time a qualifying advanced  
14 clean coal technology unit is placed in service, pro-

1       duction from the unit would be entitled to a greater  
2       applicable amount if such unit had been placed in  
3       service at a later date, the applicable amount for  
4       such unit shall be such greater amount.

5       “(c) INFLATION ADJUSTMENT.—For calendar years  
6       after 2005, each dollar amount in subsection (b)(1) shall  
7       be adjusted by multiplying such amount by the inflation  
8       adjustment factor for the calendar year in which the  
9       amount is applied. If any amount as increased under the  
10      preceding sentence is not a multiple of 0.01 cent, such  
11      amount shall be rounded to the nearest multiple of 0.01  
12      cent.

13      “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
14      poses of this section—

15           “(1) IN GENERAL.—Any term used in this sec-  
16      tion which is also used in section 45M or 48A shall  
17      have the meaning given such term in such section.

18           “(2) APPLICABLE RULES.—The rules of para-  
19      graphs (3), (4), and (5) of section 45(e) shall  
20      apply.”.

21      (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
22      tion 38(b) (relating to current year business credit), as  
23      amended by this Act, is amended by striking “plus” at  
24      the end of paragraph (24), by striking the period at the



1 end of paragraph (25) and inserting “, plus”, and by add-  
2 ing at the end the following new paragraph:

3 “(26) the qualifying advanced clean coal tech-  
4 nology production credit determined under section  
5 45N(a).”.

6 (c) DENIAL OF DOUBLE BENEFIT.—Section 29(d)  
7 (relating to other definitions and special rules) is amended  
8 by adding at the end the following new paragraph:

9 “(9) DENIAL OF DOUBLE BENEFIT.—This sec-  
10 tion shall not apply with respect to any qualified fuel  
11 the production of which may be taken into account  
12 for purposes of determining the credit under section  
13 45N.”.

14 (d) CLERICAL AMENDMENT.—The table of sections  
15 for subpart D of part IV of subchapter A of chapter 1,  
16 as amended by this Act, is amended by adding at the end  
17 the following new item:

“Sec. 45N. Credit for production from a qualifying advanced clean coal tech-  
nology unit.”.

18 (e) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to production after December 31,  
20 2004, in taxable years ending after such date.

1     **PART III—TREATMENT OF PERSONS NOT ABLE**  
2                     **TO USE ENTIRE CREDIT**  
3     **SEC. 834. TREATMENT OF PERSONS NOT ABLE TO USE EN-**  
4                     **TIRE CREDIT.**

5             (a) IN GENERAL.—Section 45M, as added by this  
6 Act, is amended by adding at the end the following new  
7 subsection:

8             “(f) TREATMENT OF PERSON NOT ABLE TO USE  
9 ENTIRE CREDIT.—

10             “(1) ALLOWANCE OF CREDITS.—

11                     “(A) IN GENERAL.—Any credit allowable  
12 under this section, section 45N, or section 48A  
13 with respect to a facility owned by a person de-  
14 scribed in subparagraph (B) may be transferred  
15 or used as provided in this subsection, and the  
16 determination as to whether the credit is allow-  
17 able shall be made without regard to the tax-  
18 exempt status of the person.

19                     “(B) PERSONS DESCRIBED.—A person is  
20 described in this subparagraph if the person  
21 is—

22                             “(i) an organization described in sec-  
23 tion 501(c)(12)(C) and exempt from tax  
24 under section 501(a),

25                             “(ii) an organization described in sec-  
26 tion 1381(a)(2)(C),

1 “(iii) a public utility (as defined in  
2 section 136(c)(2)(B)),

3 “(iv) any State or political subdivision  
4 thereof, the District of Columbia, or any  
5 agency or instrumentality of any of the  
6 foregoing,

7 “(v) any Indian tribal government  
8 (within the meaning of section 7871) or  
9 any agency or instrumentality thereof, or

10 “(vi) the Tennessee Valley Authority.

11 “(2) TRANSFER OF CREDIT.—

12 “(A) IN GENERAL.—A person described in  
13 clause (i), (ii), (iii), (iv), or (v) of paragraph  
14 (1)(B) may transfer any credit to which para-  
15 graph (1)(A) applies through an assignment to  
16 any other person not described in paragraph  
17 (1)(B). Such transfer may be revoked only with  
18 the consent of the Secretary.

19 “(B) REGULATIONS.—The Secretary shall  
20 prescribe such regulations as necessary to en-  
21 sure that any credit described in subparagraph  
22 (A) is claimed once and not reassigned by such  
23 other person.

24 “(C) TRANSFER PROCEEDS TREATED AS  
25 ARISING FROM ESSENTIAL GOVERNMENT FUNC-

1           TION.—Any proceeds derived by a person de-  
 2           scribed in clause (iii), (iv), or (v) of paragraph  
 3           (1)(B) from the transfer of any credit under  
 4           subparagraph (A) shall be treated as arising  
 5           from the exercise of an essential government  
 6           function.

7           “(3) USE OF CREDIT AS AN OFFSET.—Notwith-  
 8           standing any other provision of law, in the case of  
 9           a person described in clause (i), (ii), or (v) of para-  
 10          graph (1)(B), any credit to which paragraph (1)(A)  
 11          applies may be applied by such person, to the extent  
 12          provided by the Secretary of Agriculture, as a pre-  
 13          payment of any loan, debt, or other obligation the  
 14          entity has incurred under subchapter I of chapter 31  
 15          of title 7 of the Rural Electrification Act of 1936 (7  
 16          U.S.C. 901 et seq.), as in effect on the date of the  
 17          enactment of this section.

18          “(4) USE BY TVA.—

19               “(A) IN GENERAL.—Notwithstanding any  
 20               other provision of law, in the case of a person  
 21               described in paragraph (1)(B)(vi), any credit to  
 22               which paragraph (1)(A) applies may be applied  
 23               as a credit against the payments required to be  
 24               made in any fiscal year under section 15d(e) of  
 25               the Tennessee Valley Authority Act of 1933 (16

1 U.S.C. 831n-4(e)) as an annual return on the  
2 appropriations investment and an annual repay-  
3 ment sum.

4 “(B) TREATMENT OF CREDITS.—The ag-  
5 gregate amount of credits described in para-  
6 graph (1)(A) with respect to such person shall  
7 be treated in the same manner and to the same  
8 extent as if such credits were a payment in cash  
9 and shall be applied first against the annual re-  
10 turn on the appropriations investment.

11 “(C) CREDIT CARRYOVER.—With respect  
12 to any fiscal year, if the aggregate amount of  
13 credits described paragraph (1)(A) with respect  
14 to such person exceeds the aggregate amount of  
15 payment obligations described in subparagraph  
16 (A), the excess amount shall remain available  
17 for application as credits against the amounts  
18 of such payment obligations in succeeding fiscal  
19 years in the same manner as described in this  
20 paragraph.

21 “(5) CREDIT NOT INCOME.—Any transfer  
22 under paragraph (2) or use under paragraph (3) of  
23 any credit to which paragraph (1)(A) applies shall  
24 not be treated as income for purposes of section  
25 501(c)(12).

1 “(6) TREATMENT OF UNRELATED PERSONS.—

2 For purposes of this subsection, transfers among  
3 and between persons described in clauses (i), (ii),  
4 (iii), (iv), and (v) of paragraph (1)(B) shall be treat-  
5 ed as transfers between unrelated parties.”.

6 (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to production after December 31,  
8 2004, in taxable years ending after such date.

## 9 **Subtitle E—Oil and Gas Provisions**

### 10 **SEC. 841. OIL AND GAS FROM MARGINAL WELLS.**

11 (a) IN GENERAL.—Subpart D of part IV of sub-  
12 chapter A of chapter 1 (relating to business credits), as  
13 amended by this Act, is amended by adding at the end  
14 the following new section:

#### 15 **“SEC. 450. CREDIT FOR PRODUCING OIL AND GAS FROM** 16 **MARGINAL WELLS.**

17 “(a) GENERAL RULE.—For purposes of section 38,  
18 the marginal well production credit for any taxable year  
19 is an amount equal to the product of—

20 “(1) the credit amount, and

21 “(2) the qualified crude oil production and the  
22 qualified natural gas production which is attrib-  
23 utable to the taxpayer.

24 “(b) CREDIT AMOUNT.—For purposes of this sec-  
25 tion—

1 “(1) IN GENERAL.—The credit amount is—

2 “(A) \$3 per barrel of qualified crude oil  
3 production, and

4 “(B) 50 cents per 1,000 cubic feet of  
5 qualified natural gas production.

6 “(2) REDUCTION AS OIL AND GAS PRICES IN-  
7 CREASE.—

8 “(A) IN GENERAL.—The \$3 and 50 cents  
9 amounts under paragraph (1) shall each be re-  
10 duced (but not below zero) by an amount which  
11 bears the same ratio to such amount (deter-  
12 mined without regard to this paragraph) as—

13 “(i) the excess (if any) of the applica-  
14 ble reference price over \$15 (\$1.67 for  
15 qualified natural gas production), bears to

16 “(ii) \$3 (\$0.33 for qualified natural  
17 gas production).

18 The applicable reference price for a taxable  
19 year is the reference price of the calendar year  
20 preceding the calendar year in which the tax-  
21 able year begins.

22 “(B) INFLATION ADJUSTMENT.—

23 “(i) IN GENERAL.—In the case of any  
24 taxable year beginning in a calendar year  
25 after 2005, each of the dollar amounts

1 contained in subparagraph (A) shall be in-  
2 creased to an amount equal to such dollar  
3 amount multiplied by the inflation adjust-  
4 ment factor for such calendar year.

5 “(ii) INFLATION ADJUSTMENT FAC-  
6 TOR.—For purposes of clause (i)—

7 “(I) IN GENERAL.—The term ‘in-  
8 flation adjustment factor’ means, with  
9 respect to a calendar year, a fraction  
10 the numerator of which is the GDP  
11 implicit price deflator for the pre-  
12 ceding calendar year and the denomi-  
13 nator of which is the GDP implicit  
14 price deflator for the calendar year  
15 2004.

16 “(II) GDP IMPLICIT PRICE  
17 DEFLATOR.—The term ‘GDP implicit  
18 price deflator’ means, for any cal-  
19 endar year, the most recent revision of  
20 the implicit price deflator for the  
21 gross domestic product as of June 30  
22 of such calendar year as computed by  
23 the Department of Commerce before  
24 October 1 of such calendar year.



1           “(C) REFERENCE PRICE.—For purposes of  
2           this paragraph, the term ‘reference price’  
3           means, with respect to any calendar year—

4                   “(i) in the case of qualified crude oil  
5                   production, the reference price determined  
6                   under section 29(d)(2)(C), and

7                   “(ii) in the case of qualified natural  
8                   gas production, the Secretary’s estimate of  
9                   the annual average wellhead price per  
10                  1,000 cubic feet for all domestic natural  
11                  gas.

12          “(c) QUALIFIED CRUDE OIL AND NATURAL GAS  
13 PRODUCTION.—For purposes of this section—

14                  “(1) IN GENERAL.—The terms ‘qualified crude  
15                  oil production’ and ‘qualified natural gas production’  
16                  mean domestic crude oil or domestic natural gas  
17                  which is produced from a qualified marginal well.

18                  “(2) LIMITATION ON AMOUNT OF PRODUCTION  
19                  WHICH MAY QUALIFY.—

20                       “(A) IN GENERAL.—Crude oil or natural  
21                       gas produced during any taxable year from any  
22                       well shall not be treated as qualified crude oil  
23                       production or qualified natural gas production  
24                       to the extent production from the well during

1 the taxable year exceeds 1,095 barrels or barrel  
2 equivalents.

3 “(B) PROPORTIONATE REDUCTIONS.—

4 “(i) SHORT TAXABLE YEARS.—In the  
5 case of a short taxable year, the limitations  
6 under this paragraph shall be proportion-  
7 ately reduced to reflect the ratio which the  
8 number of days in such taxable year bears  
9 to 365.

10 “(ii) WELLS NOT IN PRODUCTION EN-  
11 TIRE YEAR.—In the case of a well which is  
12 not capable of production during each day  
13 of a taxable year, the limitations under  
14 this paragraph applicable to the well shall  
15 be proportionately reduced to reflect the  
16 ratio which the number of days of produc-  
17 tion bears to the total number of days in  
18 the taxable year.

19 “(3) NONCOMPLIANCE WITH POLLUTION  
20 LAWS.—Production from any well during any period  
21 in which such well is not in compliance with applica-  
22 ble Federal pollution prevention, control, and permit  
23 requirements shall not be treated as qualified crude  
24 oil production or qualified natural gas production.

25 “(4) DEFINITIONS.—

1           “(A) QUALIFIED MARGINAL WELL.—The  
2           term ‘qualified marginal well’ means a domestic  
3           well—

4                   “(i) the production from which during  
5                   the taxable year is treated as marginal  
6                   production under section 613A(c)(6), or

7                   “(ii) which, during the taxable year—

8                           “(I) has average daily production  
9                           of not more than 25 barrel equiva-  
10                          lents, and

11                           “(II) produces water at a rate  
12                           not less than 95 percent of total well  
13                           effluent.

14           “(B) CRUDE OIL, ETC.—The terms ‘crude  
15           oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have  
16           the meanings given such terms by section  
17           613A(e).

18           “(C) BARREL EQUIVALENT.—The term  
19           ‘barrel equivalent’ means, with respect to nat-  
20           ural gas, a conversion ratio of 6,000 cubic  
21           feet of natural gas to 1 barrel of crude oil.

22           “(D) DOMESTIC NATURAL GAS.—The term  
23           ‘domestic natural gas’ does not include Alaska  
24           natural gas (as defined in section 45Q(c)(1)).

25           “(d) OTHER RULES.—

1           “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-  
 2       PAYER.—In the case of a qualified marginal well in  
 3       which there is more than 1 owner of operating inter-  
 4       ests in the well and the crude oil or natural gas pro-  
 5       duction exceeds the limitation under subsection  
 6       (c)(2), qualifying crude oil production or qualifying  
 7       natural gas production attributable to the taxpayer  
 8       shall be determined on the basis of the ratio which  
 9       taxpayer’s revenue interest in the production bears  
 10      to the aggregate of the revenue interests of all oper-  
 11      ating interest owners in the production.

12           “(2) OPERATING INTEREST REQUIRED.—Any  
 13      credit under this section may be claimed only on  
 14      production which is attributable to the holder of an  
 15      operating interest.

16           “(3) PRODUCTION FROM NONCONVENTIONAL  
 17      SOURCES EXCLUDED.—In the case of production  
 18      from a qualified marginal well which is eligible for  
 19      the credit allowed under section 29 for the taxable  
 20      year, no credit shall be allowable under this section  
 21      unless the taxpayer elects not to claim the credit  
 22      under section 29 with respect to the well.”.

23           (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 24      tion 38(b) (relating to current year business credit), as  
 25      amended by this Act, is amended by striking “plus” at

1 the end of paragraph (25), by striking the period at the  
 2 end of paragraph (26) and inserting “, plus”, and by add-  
 3 ing at the end the following new paragraph:

4 “(27) the marginal oil and gas well production  
 5 credit determined under section 45O(a).”.

6 (c) COORDINATION WITH SECTION 29.—Section  
 7 29(a) (relating to allowance of credit) is amended by strik-  
 8 ing “There” and inserting “At the election of the tax-  
 9 payer, there”.

10 (d) CLERICAL AMENDMENT.—The table of sections  
 11 for subpart D of part IV of subchapter A of chapter 1,  
 12 as amended by this Act, is amended by adding at the end  
 13 the following new item:

“Sec. 45O. Credit for producing oil and gas from marginal  
 wells.”.

14 (e) EFFECTIVE DATE.—The amendments made by  
 15 this section shall apply to production in taxable years be-  
 16 ginning after December 31, 2004.

17 **SEC. 842. NATURAL GAS GATHERING LINES TREATED AS 7-**  
 18 **YEAR PROPERTY.**

19 (a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-  
 20 year property), as amended by this Act, is amended by  
 21 striking “and” at the end of clause (ii), by redesignating  
 22 clause (iii) as clause (iv), and by inserting after clause (ii)  
 23 the following new clause:

1 “(iii) any natural gas gathering line,  
2 and”.

3 (b) NATURAL GAS GATHERING LINE.—Section  
4 168(i) (relating to definitions and special rules), as  
5 amended by this Act, is amended by adding at the end  
6 the following new paragraph:

7 “(18) NATURAL GAS GATHERING LINE.—The  
8 term ‘natural gas gathering line’ means—

9 “(A) the pipe, equipment, and appur-  
10 tenances used to deliver natural gas from the  
11 wellhead or a commonpoint to the point at  
12 which such gas first reaches—

13 “(i) a gas processing plant,

14 “(ii) an interconnection with a trans-  
15 mission pipeline certificated by the Federal  
16 Energy Regulatory Commission as an  
17 interstate transmission pipeline,

18 “(iii) an interconnection with an  
19 intrastate transmission pipeline, or

20 “(iv) a direct interconnection with a  
21 local distribution company, a gas storage  
22 facility, or an industrial consumer, or

23 “(B) any other pipe, equipment, or appur-  
24 tenances determined to be a gathering line by  
25 the Federal Energy Regulatory Commission.

1 (c) ALTERNATIVE SYSTEM.—The table contained in  
 2 section 168(g)(3)(B) (relating to special rule for certain  
 3 property assigned to classes) is amended by inserting after  
 4 the item relating to subparagraph (C)(i) the following new  
 5 item:

“(C)(iii) ..... 14”.

6 (d) EFFECTIVE DATE.—The amendments made by  
 7 this section shall apply to property placed in service after  
 8 December 31, 2004, in taxable years ending after such  
 9 date.

10 **SEC. 843. EXPENSING OF CAPITAL COSTS INCURRED IN**  
 11 **COMPLYING WITH ENVIRONMENTAL PROTEC-**  
 12 **TION AGENCY SULFUR REGULATIONS.**

13 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 14 ter 1 (relating to itemized deductions for individuals and  
 15 corporations), as amended by this Act, is amended by in-  
 16 serting after section 179B the following new section:

17 **“SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN**  
 18 **COMPLYING WITH ENVIRONMENTAL PROTEC-**  
 19 **TION AGENCY SULFUR REGULATIONS.**

20 “(a) TREATMENT AS EXPENSES.—A small business  
 21 refiner (as defined in section 45I(c)(1)) may elect to treat  
 22 75 percent of qualified capital costs (as defined in section  
 23 45I(c)(2)) which are paid or incurred by the taxpayer dur-  
 24 ing the taxable year as expenses which are not chargeable  
 25 to capital account. Any cost so treated shall be allowed

1 as a deduction for the taxable year in which paid or in-  
2 curred.

3 “(b) REDUCED PERCENTAGE.—In the case of a small  
4 business refiner with average daily domestic refinery runs  
5 for the 1-year period ending on December 31, 2002, in  
6 excess of 155,000 barrels, the number of percentage  
7 points described in subsection (a) shall be reduced (not  
8 below zero) by the product of such number (before the  
9 application of this subsection) and the ratio of such excess  
10 to 50,000 barrels. For purposes of calculating such aver-  
11 age daily domestic refinery runs, only refineries of the re-  
12 finer or a related person (within the meaning of section  
13 613A(d)(3)) on April 1, 2003, shall be taken into account.

14 “(c) BASIS REDUCTION.—

15 “(1) IN GENERAL.—For purposes of this title,  
16 the basis of any property shall be reduced by the  
17 portion of the cost of such property taken into ac-  
18 count under subsection (a).

19 “(2) ORDINARY INCOME RECAPTURE.—For  
20 purposes of section 1245, the amount of the deduc-  
21 tion allowable under subsection (a) with respect to  
22 any property which is of a character subject to the  
23 allowance for depreciation shall be treated as a de-  
24 duction allowed for depreciation under section 167.



1       “(d) COORDINATION WITH OTHER PROVISIONS.—  
2 Section 280B shall not apply to amounts which are treated  
3 as expenses under this section.”.

4       (b) CONFORMING AMENDMENTS.—

5           (1) Section 263(a)(1), as amended by this Act,  
6 is amended by striking “or” at the end of subpara-  
7 graph (I), by striking the period at the end of sub-  
8 paragraph (J) and inserting “; or”, and by adding  
9 at the end the following new subparagraph:

10               “(K) expenditures for which a deduction is  
11 allowed under section 179C.”.

12           (2) Section 263A(c)(3) is amended by inserting  
13 “179C,” after “section”.

14           (3) Section 312(k)(3)(B), as amended by this  
15 Act, is amended by striking “or 179B” each place  
16 it appears in the heading and text and inserting  
17 “179B, or 179C”.

18           (4) Section 1016(a), as amended by this Act, is  
19 amended by striking “and” at the end of paragraph  
20 (36), by striking the period at the end of paragraph  
21 (37) and inserting “, and”, and by adding at the  
22 end the following new paragraph:

23               “(38) to the extent provided in section  
24 179C(c).”

1           (5) Paragraphs (2)(C) and (3)(C) of section  
 2           1245(a), as amended by this Act, are each amended  
 3           by inserting “179C,” after “179B,”.

4           (6) The table of sections for part VI of sub-  
 5           chapter B of chapter 1, as amended by this Act, is  
 6           amended by inserting after the item relating to sec-  
 7           tion 179B the following new item:

“Sec. 179C. Deduction for capital costs incurred in complying  
 with Environmental Protection Agency sulfur regu-  
 lations.”.

8           (c) EFFECTIVE DATE.—The amendment made by  
 9           this section shall apply to expenses paid or incurred after  
 10          December 31, 2002, in taxable years ending after such  
 11          date.

12   **SEC. 844. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**  
 13                           **SEL FUEL.**

14          (a) IN GENERAL.—Subpart D of part IV of sub-  
 15          chapter A of chapter 1 (relating to business-related cred-  
 16          its), as amended by this Act, is amended by adding at  
 17          the end the following new section:

18   **“SEC. 45P. CREDIT FOR PRODUCTION OF LOW SULFUR DIE-**  
 19                           **SEL FUEL.**

20          “(a) IN GENERAL.—For purposes of section 38, the  
 21          amount of the low sulfur diesel fuel production credit de-  
 22          termined under this section with respect to any facility  
 23          of a small business refiner is an amount equal to 5 cents  
 24          for each gallon of low sulfur diesel fuel produced during

1 the taxable year by such small business refiner at such  
2 facility.

3 “(b) MAXIMUM CREDIT.—

4 “(1) IN GENERAL.—The aggregate credit deter-  
5 mined under subsection (a) for any taxable year with  
6 respect to any facility shall not exceed—

7 “(A) 25 percent of the qualified capital  
8 costs incurred by the small business refiner  
9 with respect to such facility, reduced by

10 “(B) the aggregate credits determined  
11 under this section for all prior taxable years  
12 with respect to such facility.

13 “(2) REDUCED PERCENTAGE.—In the case of a  
14 small business refiner with average daily domestic  
15 refinery runs for the 1-year period ending on De-  
16 cember 31, 2002, in excess of 155,000 barrels, the  
17 number of percentage points described in paragraph  
18 (1) shall be reduced (not below zero) by the product  
19 of such number (before the application of this para-  
20 graph) and the ratio of such excess to 50,000 bar-  
21 rels. For purposes of calculating such average daily  
22 domestic refinery runs, only refineries of the refiner  
23 or a related person (within the meaning of section  
24 613A(d)(3)) on April 1, 2003, shall be taken into  
25 account.

1       “(c) DEFINITIONS AND SPECIAL RULE.—For pur-  
2 poses of this section—

3               “(1) SMALL BUSINESS REFINER.—The term  
4       ‘small business refiner’ means, with respect to any  
5       taxable year, a refiner of crude oil—

6               “(A) with respect to which not more than  
7       1,500 individuals are engaged in the refinery  
8       operations of the business on any day during  
9       such taxable year, and

10              “(B) the average daily domestic refinery  
11       run or average retained production of which for  
12       all facilities of the taxpayer for the 1-year pe-  
13       riod ending on December 31, 2002, did not ex-  
14       ceed 205,000 barrels.

15       For purposes of calculating such average daily do-  
16       mestic refinery run or retained production, only re-  
17       fineries of the refiner or a related person (within the  
18       meaning of section 613A(d)(3)) on April 1, 2003,  
19       shall be taken into account.

20              “(2) QUALIFIED CAPITAL COSTS.—The term  
21       ‘qualified capital costs’ means, with respect to any  
22       facility, those costs paid or incurred during the ap-  
23       plicable period for compliance with the applicable  
24       EPA regulations with respect to such facility, includ-  
25       ing expenditures for the construction of new process

1 operation units or the dismantling and reconstruc-  
2 tion of existing process units to be used in the pro-  
3 duction of low sulfur diesel fuel, associated adjacent  
4 or offsite equipment (including tankage, catalyst,  
5 and power supply), engineering, construction period  
6 interest, and sitework.

7 “(3) APPLICABLE EPA REGULATIONS.—The  
8 term ‘applicable EPA regulations’ means the High-  
9 way Diesel Fuel Sulfur Control Requirements of the  
10 Environmental Protection Agency.

11 “(4) APPLICABLE PERIOD.—The term ‘applica-  
12 ble period’ means, with respect to any facility, the  
13 period beginning on January 1, 2003, and ending on  
14 the earlier of the date which is 1 year after the date  
15 on which the taxpayer must comply with the applica-  
16 ble EPA regulations with respect to such facility or  
17 December 31, 2009.

18 “(5) LOW SULFUR DIESEL FUEL.—The term  
19 ‘low sulfur diesel fuel’ means diesel fuel with a sul-  
20 fur content of 15 parts per million or less.

21 “(6) SPECIAL RULE FOR DETERMINATION OF  
22 REFINERY RUNS.—Refinery runs shall be deter-  
23 mined under rules similar to the rules under section  
24 613A(d)(4).

1       “(d) REDUCTION IN BASIS.—For purposes of this  
2 subtitle, if a credit is determined under this section for  
3 any expenditure with respect to any property, the increase  
4 in basis of such property which would (but for this sub-  
5 section) result from such expenditure shall be reduced by  
6 the amount of the credit so determined.

7       “(e) CERTIFICATION.—

8           “(1) REQUIRED.—No credit shall be allowed  
9 unless, not later than the date which is 30 months  
10 after the first day of the first taxable year in which  
11 the low sulfur diesel fuel production credit is allowed  
12 with respect to a facility, the small business refiner  
13 obtains certification from the Secretary, after con-  
14 sultation with the Administrator of the Environ-  
15 mental Protection Agency, that the taxpayer’s quali-  
16 fied capital costs with respect to such facility will re-  
17 sult in compliance with the applicable EPA regula-  
18 tions.

19           “(2) CONTENTS OF APPLICATION.—An applica-  
20 tion for certification shall include relevant informa-  
21 tion regarding unit capacities and operating charac-  
22 teristics sufficient for the Secretary, after consulta-  
23 tion with the Administrator of the Environmental  
24 Protection Agency, to determine that such qualified

1 capital costs are necessary for compliance with the  
2 applicable EPA regulations.

3 “(3) REVIEW PERIOD.—Any application shall  
4 be reviewed and notice of certification, if applicable,  
5 shall be made within 60 days of receipt of such ap-  
6 plication. In the event the Secretary does not notify  
7 the taxpayer of the results of such certification with-  
8 in such period, the taxpayer may presume the cer-  
9 tification to be issued until so notified.

10 “(4) STATUTE OF LIMITATIONS.—With respect  
11 to the credit allowed under this section—

12 “(A) the statutory period for the assess-  
13 ment of any deficiency attributable to such  
14 credit shall not expire before the end of the 3-  
15 year period ending on the date that the review  
16 period described in paragraph (3) ends with re-  
17 spect to the taxpayer, and

18 “(B) such deficiency may be assessed be-  
19 fore the expiration of such 3-year period not-  
20 withstanding the provisions of any other law or  
21 rule of law which would otherwise prevent such  
22 assessment.

23 “(f) COOPERATIVE ORGANIZATIONS.—

24 “(1) APPORTIONMENT OF CREDIT.—

“(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

“(B) FORM AND EFFECT OF ELECTION.—An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

“(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

“(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

“(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year



1 of each patron ending on or after the last day  
 2 of the payment period (as defined in section  
 3 1382(d)) for the taxable year of the organiza-  
 4 tion or, if earlier, for the taxable year of each  
 5 patron ending on or after the date on which the  
 6 patron receives notice from the cooperative of  
 7 the apportionment.

8 “(3) SPECIAL RULE.—If for any reason the tax  
 9 imposed with respect to any patron of a cooperative  
 10 organization would, but for this paragraph, be in-  
 11 creased by any amount by reason of a credit appor-  
 12 tioned to such patron under this subsection—

13 “(A) the amount of such increase in tax  
 14 shall not be imposed on such patron, and

15 “(B) the tax imposed by this chapter on  
 16 such organization shall be increased by such  
 17 amount.

18 The increase under subparagraph (B) shall not be  
 19 treated as tax imposed by this chapter for purposes  
 20 of determining the amount of any credit under this  
 21 chapter or for purposes of section 55.”.

22 (b) CREDIT MADE PART OF GENERAL BUSINESS  
 23 CREDIT.—Subsection (b) of section 38 (relating to general  
 24 business credit), as amended by this Act, is amended by  
 25 striking “plus” at the end of paragraph (26), by striking

1 the period at the end of paragraph (27) and inserting “,  
2 plus”, and by adding at the end the following new para-  
3 graph:

4 “(28) in the case of a small business refiner,  
5 the low sulfur diesel fuel production credit deter-  
6 mined under section 45P(a).”.

7 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C  
8 (relating to certain expenses for which credits are allow-  
9 able) is amended by adding after subsection (d) the fol-  
10 lowing new subsection:

11 “(e) LOW SULFUR DIESEL FUEL PRODUCTION  
12 CREDIT.—No deduction shall be allowed for that portion  
13 of the expenses otherwise allowable as a deduction for the  
14 taxable year which is equal to the amount of the credit  
15 determined for the taxable year under section 45P(a).”.

16 (d) BASIS ADJUSTMENT.—Section 1016(a) (relating  
17 to adjustments to basis), as amended by this Act, is  
18 amended by striking “and” at the end of paragraph (37),  
19 by striking the period at the end of paragraph (38) and  
20 inserting “, and”, and by adding at the end the following  
21 new paragraph:

22 “(39) in the case of a facility with respect to  
23 which a credit was allowed under section 45P, to the  
24 extent provided in section 45P(d).”.

1 (e) CLERICAL AMENDMENT.—The table of sections  
 2 for subpart D of part IV of subchapter A of chapter 1,  
 3 as amended by this Act, is amended by adding at the end  
 4 the following new item:

“Sec. 45P. Credit for production of low sulfur diesel fuel.”.

5 (f) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to expenses paid or incurred after  
 7 December 31, 2002, in taxable years ending after such  
 8 date.

9 **SEC. 845. DETERMINATION OF SMALL REFINER EXCEPTION**  
 10 **TO OIL DEPLETION DEDUCTION.**

11 (a) IN GENERAL.—Paragraph (4) of section 613A(d)  
 12 (relating to limitations on application of subsection (c))  
 13 is amended to read as follows:

14 “(4) CERTAIN REFINERS EXCLUDED.—If the  
 15 taxpayer or 1 or more related persons engages in the  
 16 refining of crude oil, subsection (c) shall not apply  
 17 to the taxpayer for a taxable year if the average  
 18 daily refinery runs of the taxpayer and such persons  
 19 for the taxable year exceed 60,000 barrels. For pur-  
 20 poses of this paragraph, the average daily refinery  
 21 runs for any taxable year shall be determined by di-  
 22 viding the aggregate refinery runs for the taxable  
 23 year by the number of days in the taxable year.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to taxable years ending after De-  
 3 cember 31, 2004.

4 **SEC. 846. MARGINAL PRODUCTION INCOME LIMIT EXTEN-**  
 5 **SION.**

6 Section 613A(c)(6)(H) (relating to temporary sus-  
 7 pension of taxable income limit with respect to marginal  
 8 production), as amended by this Act, is amended by strik-  
 9 ing “2005” and inserting “2007”.

10 **SEC. 847. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

11 (a) IN GENERAL.—Section 167 (relating to deprecia-  
 12 tion) is amended by redesignating subsection (h) as sub-  
 13 section (i) and by inserting after subsection (g) the fol-  
 14 lowing new subsection:

15 “(h) AMORTIZATION OF DELAY RENTAL PAYMENTS  
 16 FOR DOMESTIC OIL AND GAS WELLS.—

17 “(1) IN GENERAL.—Any delay rental payment  
 18 paid or incurred in connection with the development  
 19 of oil or gas wells within the United States (as de-  
 20 fined in section 638) shall be allowed as a deduction  
 21 ratably over the 24-month period beginning on the  
 22 date that such payment was paid or incurred.

23 “(2) HALF-YEAR CONVENTION.—For purposes  
 24 of paragraph (1), any payment paid or incurred dur-

1       ing the taxable year shall be treated as paid or in-  
 2       curred on the mid-point of such taxable year.

3           “(3) EXCLUSIVE METHOD.—Except as provided  
 4       in this subsection, no depreciation or amortization  
 5       deduction shall be allowed with respect to such pay-  
 6       ments.

7           “(4) TREATMENT UPON ABANDONMENT.—If  
 8       any property to which a delay rental payment relates  
 9       is retired or abandoned during the 24-month period  
 10      described in paragraph (1), no deduction shall be al-  
 11      lowed on account of such retirement or abandon-  
 12      ment and the amortization deduction under this sub-  
 13      section shall continue with respect to such payment.

14          “(5) DELAY RENTAL PAYMENTS.—For purposes  
 15      of this subsection, the term ‘delay rental payment’  
 16      means an amount paid for the privilege of deferring  
 17      development of an oil or gas well under an oil or gas  
 18      lease.”.

19          (b) EFFECTIVE DATE.—The amendments made by  
 20      this section shall apply to amounts paid or incurred in tax-  
 21      able years beginning after December 31, 2004.

22      **SEC. 848. AMORTIZATION OF GEOLOGICAL AND GEO-**  
 23                                   **PHYSICAL EXPENDITURES.**

24          (a) IN GENERAL.—Section 167 (relating to deprecia-  
 25      tion), as amended by this Act, is amended by redesign-

1 nating subsection (i) as subsection (j) and by inserting  
 2 after subsection (h) the following new subsection:

3 “(i) AMORTIZATION OF GEOLOGICAL AND GEO-  
 4 PHYSICAL EXPENDITURES.—

5 “(1) IN GENERAL.—Any geological and geo-  
 6 physical expenses paid or incurred in connection  
 7 with the exploration for, or development of, oil or  
 8 gas within the United States (as defined in section  
 9 638) shall be allowed as a deduction ratably over the  
 10 24-month period beginning on the date that such ex-  
 11 pense was paid or incurred.

12 “(2) SPECIAL RULES.—For purposes of this  
 13 subsection, rules similar to the rules of paragraphs  
 14 (2), (3), and (4) of subsection (h) shall apply.”.

15 (b) CONFORMING AMENDMENT.—Section 263A(c)(3)  
 16 is amended by inserting “167(h), 167(i),” after “under  
 17 section”.

18 (c) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to costs paid or incurred in taxable  
 20 years beginning after December 31, 2004.

1 **SEC. 849. EXTENSION AND MODIFICATION OF CREDIT FOR**  
2 **PRODUCING FUEL FROM A NONCONVEN-**  
3 **TIONAL SOURCE.**

4 (a) IN GENERAL.—Section 29 (relating to credit for  
5 producing fuel from a nonconventional source) is amended  
6 by adding at the end the following new subsection:

7 “(h) EXTENSION FOR OTHER FACILITIES.—

8 “(1) OIL AND GAS.—In the case of a well or fa-  
9 cility for producing qualified fuels described in sub-  
10 paragraph (A) or (B) of subsection (c)(1) which was  
11 drilled or placed in service after December 31, 2004,  
12 and before January 1, 2007, notwithstanding sub-  
13 section (f), this section shall apply with respect to  
14 such fuels produced at such well or facility before  
15 the close of the 3-year period beginning on the date  
16 that such well is drilled or such facility is placed in  
17 service.

18 “(2) FACILITIES PRODUCING FUELS FROM AG-  
19 RICULTURAL AND ANIMAL WASTE.—

20 “(A) IN GENERAL.—In the case of a facil-  
21 ity for producing liquid, gaseous, or solid fuels  
22 from qualified agricultural and animal wastes,  
23 including such fuels when used as feedstocks,  
24 which was placed in service after December 31,  
25 2004, and before January 1, 2007, this section  
26 shall apply with respect to fuel produced at

1 such facility before the close of the 3-year pe-  
2 riod beginning on the date such facility is  
3 placed in service.

4 “(B) QUALIFIED AGRICULTURAL AND ANI-  
5 MAL WASTE.—For purposes of this paragraph,  
6 the term ‘qualified agricultural and animal  
7 waste’ means agriculture and animal waste, in-  
8 cluding by-products, packaging, and any mate-  
9 rials associated with the processing, feeding,  
10 selling, transporting, or disposal of agricultural  
11 or animal products or wastes.

12 “(3) WELLS PRODUCING VISCOUS OIL.—

13 “(A) IN GENERAL.—In the case of a well  
14 for producing viscous oil which was placed in  
15 service after December 31, 2004, and before  
16 January 1, 2007, this section shall apply with  
17 respect to fuel produced at such well before the  
18 close of the 3-year period beginning on the date  
19 such well is placed in service.

20 “(B) VISCOUS OIL.—The term ‘viscous oil’  
21 means heavy oil, as defined in section  
22 613A(c)(6), except that—

23 “(i) ‘22 degrees’ shall be substituted  
24 for ‘20 degrees’ in applying subparagraph  
25 (F) thereof, and



1           “(ii) in all cases, the oil gravity shall  
2           be measured from the initial well-head  
3           samples, drill cuttings, or down hole sam-  
4           ples.

5           “(C) WAIVER OF UNRELATED PERSON RE-  
6           QUIREMENT.—In the case of viscous oil, the re-  
7           quirement under subsection (a)(2)(A) of a sale  
8           to an unrelated person shall not apply to any  
9           sale to the extent that the viscous oil is not con-  
10          sumed in the immediate vicinity of the wellhead.

11          “(4) FACILITIES PRODUCING REFINED COAL.—

12           “(A) IN GENERAL.—In the case of a facil-  
13          ity described in subparagraph (C) for producing  
14          refined coal which was placed in service after  
15          December 31, 2004, and before January 1,  
16          2007, this section shall apply with respect to  
17          fuel produced at such facility before the close of  
18          the 5-year period beginning on the date such  
19          facility is placed in service.

20           “(B) REFINED COAL.—For purposes of  
21          this paragraph, the term ‘refined coal’ means a  
22          fuel which is a liquid, gaseous, or solid syn-  
23          thetic fuel produced from coal (including lig-  
24          nite) or high carbon fly ash, including such fuel  
25          used as a feedstock.

“(C) COVERED FACILITIES.—

“(i) IN GENERAL.—A facility is described in this subparagraph if such facility produces refined coal using a technology which results in—

“(I) a qualified emission reduction, and

“(II) a qualified enhanced value.

“(ii) QUALIFIED EMISSION REDUCTION.—For purposes of this subparagraph, the term ‘qualified emission reduction’ means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2004.

“(iii) QUALIFIED ENHANCED VALUE.—For purposes of this subparagraph, the term ‘qualified enhanced value’ means an increase of at least 50 percent in

1 the market value of the refined coal (ex-  
2 cluding any increase caused by materials  
3 combined or added during the production  
4 process), as compared to the value of the  
5 feedstock coal.

6 “(iv) QUALIFYING ADVANCED CLEAN  
7 COAL TECHNOLOGY UNITS EXCLUDED.—A  
8 facility described in this subparagraph  
9 shall not include a qualifying advanced  
10 clean coal technology unit (as defined in  
11 section 48A(b)).

12 “(5) COALMINE GAS.—

13 “(A) IN GENERAL.—This section shall  
14 apply to coalmine gas—

15 “(i) captured or extracted by the tax-  
16 payer during the period beginning after  
17 December 31, 2004, and ending before  
18 January 1, 2007, and

19 “(ii) utilized as a fuel source or sold  
20 by or on behalf of the taxpayer to an unre-  
21 lated person during such period.

22 “(B) COALMINE GAS.—For purposes of  
23 this paragraph, the term ‘coalmine gas’ means  
24 any methane gas which is—

1                   “(i) liberated during or as a result of  
2                   coal mining operations, or

3                   “(ii) extracted up to 10 years in ad-  
4                   vance of coal mining operations as part of  
5                   a specific plan to mine a coal deposit.

6                   “(C) SPECIAL RULE FOR ADVANCED EX-  
7                   TRACTION.—In the case of coalmine gas which  
8                   is captured in advance of coal mining oper-  
9                   ations, the credit under subsection (a) shall be  
10                  allowed only after the date the coal extraction  
11                  occurs in the immediate area where the  
12                  coalmine gas was removed.

13                  “(D) NONCOMPLIANCE WITH POLLUTION  
14                  LAWS.—This paragraph shall not apply to the  
15                  capture or extraction of coalmine gas from coal  
16                  mining operations with respect to any period in  
17                  which such coal mining operations are not in  
18                  compliance with applicable State and Federal  
19                  pollution prevention, control, and permit re-  
20                  quirements.

21                  “(6) SPECIAL RULES.—In determining the  
22                  amount of credit allowable under this section solely  
23                  by reason of this subsection—

24                         “(A) FUELS TREATED AS QUALIFIED  
25                         FUELS.—Any fuel described in paragraph (2),

1 (3), (4), or (5) shall be treated as a qualified  
2 fuel for purposes of this section.

3 “(B) DAILY LIMIT.—The amount of quali-  
4 fied fuels described in subparagraph (A) or  
5 (B)(i) of subsection (c)(1) sold during any tax-  
6 able year which may be taken into account by  
7 reason of this subsection with respect to any  
8 project shall not exceed an average barrel-of-oil  
9 equivalent of 200,000 cubic feet of natural gas  
10 per day. Days before the date the project is  
11 placed in service shall not be taken into account  
12 in determining such average.

13 “(C) EXTENSION PERIOD TO COMMENCE  
14 WITH UNADJUSTED CREDIT AMOUNT AND NEW  
15 PHASEOUT ADJUSTMENT.—For purposes of ap-  
16 plying subsection (b)(2), in the case of fuels  
17 sold after 2003—

18 “(i) paragraphs (1)(A) and (2) of sub-  
19 section (b) shall be applied by substituting  
20 ‘\$35.00’ for ‘\$23.50’, and

21 “(ii) subparagraph (B) of subsection  
22 (d)(2) shall be applied by substituting  
23 ‘2002’ for ‘1979’ in determining such dol-  
24 lar amounts.”.

1       (b) EXTENSION FOR CERTAIN FUEL PRODUCED AT  
2 EXISTING FACILITIES.—

3           (1) EXTENSION.—Section 29(f)(2) (relating to  
4 application of section) is amended by inserting  
5 “(January 1, 2006, in the case of any coke, coke  
6 gas, or natural gas and byproducts produced by coal  
7 gasification from lignite in a facility described in  
8 paragraph (1)(B))” after “January 1, 2003”.

9           (2) USE OF CREDIT AS AN OFFSET.—Section  
10 29, as amended by subsection (a), is amended by  
11 adding the end the following new subsection:

12       “(i) USE OF CREDIT AS AN OFFSET.—

13           “(1) IN GENERAL.—Any credit allowable under  
14 subsection (a) with respect to any natural gas and  
15 byproducts produced by coal gasification from lignite  
16 in a facility described in paragraph (1)(B) of sub-  
17 section (f) owned by a person described in section  
18 1381(a)(2)(C) or subsidiaries of such person may be  
19 used as provided in paragraph (2).

20           “(2) USE OF CREDIT AS AN OFFSET.—Notwith-  
21 standing any other provision of law, in the case of  
22 a person described in paragraph (1), any credit to  
23 which paragraph (1) applies may be applied by such  
24 person—

1           “(A) to the extent provided by the Sec-  
2           retary of Agriculture, as a prepayment of any  
3           loan, debt, or other obligation the entity has in-  
4           curred under subchapter I of chapter 31 of title  
5           7 of the Rural Electrification Act of 1936 (7  
6           U.S.C. 901 et seq.), as in effect on the date of  
7           the enactment of the Energy Tax Incentives  
8           Act of 2003, and

9           “(B) to the extent provided by the Sec-  
10          retary of Energy, as a prepayment not to ex-  
11          ceed 50 percent of any obligation the person  
12          has incurred pursuant to an asset purchase  
13          agreement entered into with the Secretary and  
14          dated October 7, 1988.

15          “(3) CREDIT NOT INCOME.—Any use under  
16          paragraph (2) of any credit to which paragraph (1)  
17          applies shall not be treated as income for purposes  
18          of this title.

19          “(4) TREATMENT OF UNRELATED PERSONS.—  
20          For purposes of subsection (a)(2)(A), sales of quali-  
21          fied fuels among and between persons described in  
22          paragraph (1) shall be treated as sales between un-  
23          related parties.”.

24          (c) TREATMENT AS BUSINESS CREDIT.—

1           (1) CREDIT MOVED TO SUBPART RELATING TO  
 2 BUSINESS RELATED CREDITS.—The Internal Rev-  
 3 enue Code of 1986, as amended by this Act, is  
 4 amended by redesignating section 29, as amended by  
 5 this Act, as section 45R and by moving section 45R  
 6 (as so redesignated) from subpart B of part IV of  
 7 subchapter A of chapter 1 to the end of subpart D  
 8 of part IV of subchapter A of chapter 1.

9           (2) CREDIT TREATED AS BUSINESS CREDIT.—  
 10 Section 38(b), as amended by this Act, is amended  
 11 by striking “plus” at the end of paragraph (29), by  
 12 striking the period at the end of paragraph (30) and  
 13 inserting “, plus”, and by adding at the end the fol-  
 14 lowing:

15           “(31) the nonconventional source production  
 16 credit determined under section 45R(a).”.

17           (3) CONFORMING AMENDMENTS.—

18           (A) Section 30(b)(2)(A), as redesignated  
 19 by this Act, is amended by striking “sections 27  
 20 and 29” and inserting “section 27”.

21           (B) Sections 43(b)(2) and 613A(c)(6)(C)  
 22 are each amended by striking “section  
 23 29(d)(2)(C)” and inserting “section  
 24 45R(d)(2)(C)”.



1           (C) Section 45R(a), as redesignated by  
2           paragraph (1), is amended by striking “At the  
3           election of the taxpayer, there shall be allowed  
4           as a credit against the tax imposed by this  
5           chapter for the taxable year” and inserting  
6           “For purposes of section 38, if the taxpayer  
7           elects to have this section apply, the nonconven-  
8           tional source production credit determined  
9           under this section for the taxable year is”.

10          (D) Section 45R(b), as so redesignated, is  
11          amended by striking paragraph (6).

12          (E) Section 53(d)(1)(B)(iii) is amended by  
13          striking “under section 29” and all that follows  
14          through “or not allowed”.

15          (F) Section 55(c)(2) is amended by strik-  
16          ing “29(b)(6),”.

17          (G) Subsection (a) of section 772, as  
18          amended by this Act, is amended by striking  
19          paragraph (10) and by redesignating para-  
20          graphs (11) and (12) as paragraphs (10) and  
21          (11), respectively.

22          (H) Paragraph (5) of section 772(d) is  
23          amended by striking “the foreign tax credit,  
24          and the credit allowable under section 29” and  
25          inserting “and the foreign tax credit”.

1 (I) The table of sections for subpart B of  
 2 part IV of subchapter A of chapter 1 is amend-  
 3 ed by striking the item relating to section 29.

4 (J) The table of sections for subpart D of  
 5 part IV of subchapter A of chapter 1, as  
 6 amended by this Act, is amended by inserting  
 7 after the item relating to section 45Q the fol-  
 8 lowing new item:

“Sec. 45R. Credit for producing fuel from a nonconventional  
 source.”.

9 (d) STUDY OF COALBED METHANE.—

10 (1) IN GENERAL.—The Secretary of the Treas-  
 11 ury shall conduct a study regarding the effect of sec-  
 12 tion 45R of the Internal Revenue Code of 1986 on  
 13 the production of coalbed methane.

14 (2) CONTENTS OF STUDY.—The study under  
 15 paragraph (1) shall estimate the total amount of  
 16 credits under section 45R of the Internal Revenue  
 17 Code of 1986 claimed annually and in the aggregate  
 18 which are related to the production of coalbed meth-  
 19 ane since the date of the enactment of such section  
 20 45R. Such study shall report the annual value of  
 21 such credits allowable for coalbed methane compared  
 22 to the average annual wellhead price of natural gas  
 23 (per thousand cubic feet of natural gas). Such study  
 24 shall also estimate the incremental increase in pro-

1       duction of coalbed methane which has resulted from  
 2       the enactment of such section 45R, and the cost to  
 3       the Federal Government, in terms of the net tax  
 4       benefits claimed, per thousand cubic feet of incre-  
 5       mental coalbed methane produced annually and in  
 6       the aggregate since such enactment.

7       (e) EFFECTIVE DATES.—

8           (1) IN GENERAL.—Except as provided in para-  
 9       graph (2), the amendments made by this section  
 10      shall apply to fuel sold after December 31, 2004, in  
 11      taxable years ending after such date.

12          (2) EXISTING FACILITIES.—The amendments  
 13      made by subsection (b) shall apply to fuel sold after  
 14      December 31, 2002, in taxable years ending after  
 15      such date.

16          (3) TREATMENT AS BUSINESS CREDIT.—The  
 17      amendments made by subsection (c) shall apply to  
 18      taxable years ending after December 31, 2003.

19      **SEC. 850. NATURAL GAS DISTRIBUTION LINES TREATED AS**  
 20                              **15-YEAR PROPERTY.**

21      (a) IN GENERAL.—Section 168(e)(3)(E) (defining  
 22      15-year property), as amended by this Act, is amended  
 23      by striking “and” at the end of clause (iii), by striking  
 24      the period at the end of clause (iv) and by inserting “,  
 25      and”, and by adding at the end the following new clause:

1 “(v) any natural gas distribution  
2 line.”.

3 (b) ALTERNATIVE SYSTEM.—The table contained in  
4 section 168(g)(3)(B) (relating to special rule for certain  
5 property assigned to classes), as amended by this Act, is  
6 amended by adding after the item relating to subpara-  
7 graph (E)(iii) the following new item:

“(E)(v) ..... 35”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to property placed in service after  
10 December 31, 2004, in taxable years ending after such  
11 date.

12 **SEC. 851. CREDIT FOR ALASKA NATURAL GAS.**

13 (a) IN GENERAL.—Subpart D of part IV of sub-  
14 chapter A of chapter 1 (relating to business related cred-  
15 its), as amended by this Act, is amended by adding at  
16 the end the following new section:

17 **“SEC. 45Q. ALASKA NATURAL GAS.**

18 “(a) IN GENERAL.—For purposes of section 38, the  
19 Alaska natural gas credit for any taxable year is an  
20 amount equal to the product of—

21 “(1) the credit amount, and

22 “(2) Alaska natural gas the production of which  
23 is attributable to the taxpayer.

24 “(b) CREDIT AMOUNT.—For purposes of this sec-  
25 tion—

1           “(1) IN GENERAL.—The credit amount is \$0.52  
2       per 1,000,000 Btu of Alaska natural gas.

3           “(2) REDUCTION AS GAS PRICES INCREASE.—

4           “(A) IN GENERAL.—The dollar amount  
5       under paragraph (1) shall be reduced (but not  
6       below zero) by an amount which bears the same  
7       ratio to such amount (determined without re-  
8       gard to this paragraph) as—

9           “(i) the excess (if any) of the applica-  
10       ble reference price over \$0.83, bears to

11          “(ii) \$0.52.

12          “(B) APPLICABLE REFERENCE PRICE.—

13       For purposes of this paragraph—

14          “(i) IN GENERAL.—The applicable  
15       reference price for any calendar month in  
16       a taxable year is the reference price for the  
17       calendar month in which production oc-  
18       curs.

19          “(ii) REFERENCE PRICE.—The term  
20       ‘reference price’ means, with respect to any  
21       calendar month, a published market price  
22       for natural gas in United States dollars  
23       per 1,000,000 Btu (reduced by any gas  
24       transportation costs and gas processing  
25       costs as determined by the appropriate na-

1 tional regulatory body for natural gas  
2 transportation) as determined under regu-  
3 lations by the Secretary.

4 “(C) INFLATION ADJUSTMENT.—

5 “(i) IN GENERAL.—In the case of any  
6 taxable year beginning in a calendar year  
7 after 2005, each of the dollar amounts  
8 contained in paragraph (1) and subpara-  
9 graph (A) of this paragraph shall be in-  
10 creased to an amount equal to such dollar  
11 amount multiplied by the inflation adjust-  
12 ment factor for such calendar year.

13 “(ii) INFLATION ADJUSTMENT FAC-  
14 TOR.—For purposes of clause (i)—

15 “(I) IN GENERAL.—The term ‘in-  
16 flation adjustment factor’ means, with  
17 respect to a calendar year, a fraction  
18 the numerator of which is the GDP  
19 implicit price deflator for the pre-  
20 ceding calendar year and the denomi-  
21 nator of which is the GDP implicit  
22 price deflator for the calendar year  
23 2004.

24 “(II) GDP IMPLICIT PRICE  
25 DEFLATOR.—The term ‘GDP implicit

1 price deflator’ means, for any cal-  
2 endar year, the most recent revision of  
3 the implicit price deflator for the  
4 gross domestic product as of June 30  
5 of such calendar year as computed by  
6 the Department of Commerce before  
7 October 1 of such calendar year.

8 “(c) ALASKA NATURAL GAS.—For purposes of this  
9 section—

10 “(1) IN GENERAL.—The term ‘Alaska natural  
11 gas’ means natural gas entering the Alaska natural  
12 gas pipeline (as defined in section 168(i)(19) (deter-  
13 mined without regard to subparagraph (B) thereof))  
14 which is produced from a well—

15 “(A) located in the area of the State of  
16 Alaska lying north of 64 degrees North lati-  
17 tude, determined by excluding the area of the  
18 Alaska National Wildlife Refuge (including the  
19 continental shelf thereof within the meaning of  
20 section 638(1)), and

21 “(B) pursuant to the applicable State and  
22 Federal pollution prevention, control, and per-  
23 mit requirements from such area (including the  
24 continental shelf thereof within the meaning of  
25 section 638(1)).

1           “(2) NATURAL GAS.—The term ‘natural gas’  
2       has the meaning given such term by section  
3       613A(e)(2).

4           “(d) SPECIAL RULES.—For purposes of this sec-  
5       tion—

6           “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-  
7       PAYER.—

8           “(A) IN GENERAL.—In the case of a well  
9       in which there is more than 1 person or enti-  
10      ty—

11           “(i) entitled to production of Alaska  
12      natural gas, or

13           “(ii) at the election of such person or  
14      entity, entitled to the value of production  
15      as either an operating interest owner or a  
16      royalty interest owner,

17      the portion of such production attributable to  
18      such person or entity shall be determined on  
19      the basis of the ratio which the person’s or enti-  
20      ty’s interest in the production or the value of  
21      production bears to the aggregate of the inter-  
22      ests of all such persons or entities. Production  
23      otherwise attributable to a United States tax-  
24      exempt person or entity by reason of a royalty  
25      interest shall be attributable to such person or



1           entity with respect to whom royalty-in-value  
 2           production remains or to whom royalty-in-kind  
 3           production is sold.

4           “(B) PARTNERSHIP PROPERTIES.—In the  
 5           case of a partnership, for purposes of applying  
 6           subparagraph (A), production shall be attrib-  
 7           utable to its partners based on each partner’s  
 8           distributive share of Alaska natural gas which  
 9           is produced from partnership properties and at-  
 10          tributable to the partnership or its partners  
 11          under subparagraph (A).

12          “(2) PASS-THRU IN THE CASE OF ESTATES  
 13          AND TRUSTS.—Under regulations prescribed by the  
 14          Secretary, rules similar to the rules of subsection (d)  
 15          of section 52 shall apply.

16          “(e) APPLICATION OF SECTION.—This section shall  
 17          apply to Alaska natural gas during the period—

18               “(1) beginning with the later of—

19                   “(A) January 1, 2010, or

20                   “(B) the initial date for the interstate  
 21                  transportation of such Alaska natural gas, and

22               “(2) ending with the date which is 25 years  
 23          after the date described in paragraph (1).”.

24          (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 25          tion 38(b) (relating to current year business credit), as

1 amended by this Act, is amended by striking “plus” at  
 2 the end of paragraph (27), by striking the period at the  
 3 end of paragraph (28) and inserting “, plus”, and by add-  
 4 ing at the end the following new paragraph:

5           “(29) The Alaska natural gas credit determined  
 6       under section 45Q(a).”.

7       (c) ALLOWING CREDIT AGAINST ENTIRE REGULAR  
 8 TAX AND MINIMUM TAX.—

9           (1) IN GENERAL.—Section 38(c) (relating to  
 10 limitation based on amount of tax), as amended by  
 11 this Act, is amended by redesignating paragraph (5)  
 12 as paragraph (6) and by inserting after paragraph  
 13 (4) the following new paragraph:

14           “(5) SPECIAL RULES FOR ALASKA NATURAL  
 15 GAS CREDIT.—

16           “(A) IN GENERAL.—In the case of the  
 17 Alaska natural gas credit—

18                   “(i) this section and section 39 shall  
 19 be applied separately with respect to the  
 20 credit, and

21                   “(ii) in applying paragraph (1) to the  
 22 credit—

23                           “(I) the amounts in subpara-  
 24 graphs (A) and (B) thereof shall be  
 25 treated as being zero, and

1 “(II) the limitation under para-  
 2 graph (1) (as modified by subclause  
 3 (I)) shall be reduced by the credit al-  
 4 lowed under subsection (a) for the  
 5 taxable year (other than the Alaska  
 6 natural gas credit).

7 “(B) ALASKA NATURAL GAS CREDIT.—  
 8 For purposes of this subsection, the term ‘Alas-  
 9 ka natural gas credit’ means the credit allow-  
 10 able under subsection (a) by reason of section  
 11 45Q(a).”.

12 (2) CONFORMING AMENDMENTS.—Subclause  
 13 (II) of section 38(c)(2)(A)(ii), as amended by this  
 14 Act, subclause (II) of section 38(c)(3)(A)(ii), as  
 15 amended by this Act, and subclause (II) of section  
 16 38(c)(4)(A)(ii), as added by this Act, are each  
 17 amended by inserting “or the Alaska natural gas  
 18 credit” after “specified credits”.

19 (d) CLERICAL AMENDMENT.—The table of sections  
 20 for subpart D of part IV of subchapter A of chapter 1,  
 21 as amended by this Act, is amended by adding at the end  
 22 the following new item:

“Sec. 45Q. Alaska natural gas.”.

1 **SEC. 852. CERTAIN ALASKA NATURAL GAS PIPELINE PROP-**  
 2 **ERTY TREATED AS 7-YEAR PROPERTY.**

3 (a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-  
 4 year property), as amended by this Act, is amended by  
 5 striking “and” at the end of clause (iii), by redesignating  
 6 clause (iv) as clause (v), and by inserting after clause (iii)  
 7 the following new clause:

8 “(iv) any Alaska natural gas pipeline,  
 9 and”.

10 (b) ALASKA NATURAL GAS PIPELINE.—Section  
 11 168(i) (relating to definitions and special rules), as  
 12 amended by this Act, is amended by adding at the end  
 13 the following new paragraph:

14 “(19) ALASKA NATURAL GAS PIPELINE.—The  
 15 term ‘Alaska natural gas pipeline’ means the natural  
 16 gas pipeline system located in the State of Alaska  
 17 which—

18 “(A) has a capacity of more than  
 19 500,000,000,000 Btu of natural gas per day,  
 20 and

21 “(B) is—

22 “(i) placed in service after December  
 23 31, 2012, or

24 “(ii) treated as placed in service on  
 25 January 1, 2013, if the taxpayer who

1 places such system in service before Janu-  
 2 ary 1, 2013, elects such treatment.

3 Such term includes the pipe, trunk lines, related  
 4 equipment, and appurtenances used to carry natural  
 5 gas, but does not include any gas processing plant.”.

6 (c) ALTERNATIVE SYSTEM.—The table contained in  
 7 section 168(g)(3)(B) (relating to special rule for certain  
 8 property assigned to classes), as amended by this Act, is  
 9 amended by inserting after the item relating to subpara-  
 10 graph (C)(iii) the following new item:

“(C)(iv) ..... 22”.

11 (d) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to property placed in service after  
 13 December 31, 2004.

14 **SEC. 853. EXTENSION OF ENHANCED OIL RECOVERY CRED-**  
 15 **IT TO CERTAIN ALASKA FACILITIES.**

16 (a) IN GENERAL.—Section 43(c)(1) (defining quali-  
 17 fied enhanced oil recovery costs) is amended by adding at  
 18 the end the following new subparagraph:

19 “(D) Any amount which is paid or in-  
 20 curred during the taxable year to construct a  
 21 gas treatment plant which—

22 “(i) is located in the area of the  
 23 United States (within the meaning of sec-  
 24 tion 638(1)) lying north of 64 degrees  
 25 North latitude,

1 “(ii) prepares Alaska natural gas (as  
 2 defined in section 45Q(c)(1)) for transpor-  
 3 tation through a pipeline with a capacity of  
 4 at least 2,000,000,000,000 Btu of natural  
 5 gas per day, and

6 “(iii) produces carbon dioxide which is  
 7 injected into hydrocarbon-bearing geologi-  
 8 cal formations.”.

9 (b) EFFECTIVE DATE.—The amendment made by  
 10 this section shall apply to costs paid or incurred in taxable  
 11 years beginning after December 31, 2004.

12 **SEC. 854. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**  
 13 **MENTS FOR NATURAL GAS.**

14 (a) IN GENERAL.—Section 148(b) (relating to higher  
 15 yielding investments) is amended by adding at the end the  
 16 following new paragraph:

17 “(4) SAFE HARBOR FOR PREPAID NATURAL  
 18 GAS.—

19 “(A) IN GENERAL.—The term ‘investment-  
 20 type property’ does not include a prepayment  
 21 under a qualified natural gas supply contract.

22 “(B) QUALIFIED NATURAL GAS SUPPLY  
 23 CONTRACT.—For purposes of this paragraph,  
 24 the term ‘qualified natural gas supply contract’  
 25 means any contract to acquire natural gas for

1 resale by or for a utility owned by a govern-  
2 mental unit if the amount of gas permitted to  
3 be acquired under the contract for the utility  
4 during any year does not exceed the sum of—

5 “(i) the annual average amount dur-  
6 ing the testing period of natural gas pur-  
7 chased (other than for resale) by cus-  
8 tomers of such utility who are located  
9 within the service area of such utility, and

10 “(ii) the amount of natural gas to be  
11 used to transport the prepaid natural gas  
12 to the utility during such year.

13 “(C) NATURAL GAS USED TO GENERATE  
14 ELECTRICITY.—Natural gas used to generate  
15 electricity shall be taken into account in deter-  
16 mining the average under subparagraph  
17 (B)(i)—

18 “(i) only if the electricity is generated  
19 by a utility owned by a governmental unit,  
20 and

21 “(ii) only to the extent that the elec-  
22 tricity is sold (other than for resale) to  
23 customers of such utility who are located  
24 within the service area of such utility.

1                   “(D) ADJUSTMENTS FOR CHANGES IN  
2 CUSTOMER BASE.—

3                   “(i) NEW BUSINESS CUSTOMERS.—  
4 If—

5                   “(I) after the close of the testing  
6 period and before the date of issuance  
7 of the issue, the utility owned by a  
8 governmental unit enters into a con-  
9 tract to supply natural gas (other  
10 than for resale) for use by a business  
11 at a property within the service area  
12 of such utility, and

13                   “(II) the utility did not supply  
14 natural gas to such property during  
15 the testing period or the ratable  
16 amount of natural gas to be supplied  
17 under the contract is significantly  
18 greater than the ratable amount of  
19 gas supplied to such property during  
20 the testing period,

21 then a contract shall not fail to be treated  
22 as a qualified natural gas supply contract  
23 by reason of supplying the additional nat-  
24 ural gas under the contract referred to in  
25 subclause (I).



1           “(ii) OVERALL LIMITATION.—The av-  
2           erage under subparagraph (B)(i) shall not  
3           exceed the annual amount of natural gas  
4           reasonably expected to be purchased (other  
5           than for resale) by persons who are located  
6           within the service area of such utility and  
7           who, as of the date of issuance of the  
8           issue, are customers of such utility.

9           “(E) RULING REQUESTS.—The Secretary  
10          may increase the average under subparagraph  
11          (B)(i) for any period if the utility owned by the  
12          governmental unit establishes to the satisfaction  
13          of the Secretary that, based on objective evi-  
14          dence of growth in natural gas consumption or  
15          population, such average would otherwise be in-  
16          sufficient for such period.

17          “(F) ADJUSTMENT FOR NATURAL GAS  
18          OTHERWISE ON HAND.—

19               “(i) IN GENERAL.—The amount oth-  
20               erwise permitted to be acquired under the  
21               contract for any period shall be reduced  
22               by—

23                       “(I) the applicable share of nat-  
24                       ural gas held by the utility on the  
25                       date of issuance of the issue, and

1                   “(II) the natural gas (not taken  
2                   into account under subclause (I))  
3                   which the utility has a right to ac-  
4                   quire during such period (determined  
5                   as of the date of issuance of the  
6                   issue).

7                   “(ii) APPLICABLE SHARE.—For pur-  
8                   poses of clause (i), the term ‘applicable  
9                   share’ means, with respect to any period,  
10                  the natural gas allocable to such period if  
11                  the gas were allocated ratably over the pe-  
12                  riod to which the prepayment relates.

13                  “(G) INTENTIONAL ACTS.—Subparagraph  
14                  (A) shall cease to apply to any issue if the util-  
15                  ity owned by the governmental unit engages in  
16                  any intentional act to render the volume of nat-  
17                  ural gas acquired by such prepayment to be in  
18                  excess of the sum of—

19                         “(i) the amount of natural gas needed  
20                         (other than for resale) by customers of  
21                         such utility who are located within the  
22                         service area of such utility, and

23                         “(ii) the amount of natural gas used  
24                         to transport such natural gas to the utility.

1           “(H) TESTING PERIOD.—For purposes of  
2           this paragraph, the term ‘testing period’ means,  
3           with respect to an issue, the most recent 5 cal-  
4           endar years ending before the date of issuance  
5           of the issue.

6           “(I) SERVICE AREA.—For purposes of this  
7           paragraph, the service area of a utility owned  
8           by a governmental unit shall be comprised of—

9                   “(i) any area throughout which such  
10                  utility provided at all times during the  
11                  testing period—

12                           “(I) in the case of a natural gas  
13                           utility, natural gas transmission or  
14                           distribution services, and

15                           “(II) in the case of an electric  
16                           utility, electricity distribution services,

17                           “(ii) any area within a county contig-  
18                           uous to the area described in clause (i) in  
19                           which retail customers of such utility are  
20                           located if such area is not also served by  
21                           another utility providing natural gas or  
22                           electricity services, as the case may be, and

23                           “(iii) any area recognized as the serv-  
24                           ice area of such utility under State or Fed-  
25                           eral law.”.

1       (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY  
2 TO PREPAYMENTS FOR NATURAL GAS.—Section  
3 141(c)(2) (providing exceptions to the private loan financ-  
4 ing test) is amended by striking “or” at the end of sub-  
5 paragraph (A), by striking the period at the end of sub-  
6 paragraph (B) and inserting “, or”, and by adding at the  
7 end the following new subparagraph:

8               “(C) is a qualified natural gas supply con-  
9 tract (as defined in section 148(b)(4)).”.

10       (c) CONFORMING AMENDMENT.—Section 141(d) is  
11 amended by adding at the end the following new para-  
12 graph:

13               “(7) EXCEPTION FOR QUALIFIED ELECTRIC  
14 AND NATURAL GAS SUPPLY CONTRACTS.—The term  
15 ‘nongovernmental output property’ shall not include  
16 any contract for the prepayment of electricity or nat-  
17 ural gas which is not investment property under sec-  
18 tion 148(b)(2).”.

19       (d) EFFECTIVE DATE.—The amendment made by  
20 this section shall apply to obligations issued after Decem-  
21 ber 31, 2004.

## **Subtitle F—Electric Utility Restructuring Provisions**

### **SEC. 855. MODIFICATIONS TO SPECIAL RULES FOR NU- CLEAR DECOMMISSIONING COSTS.**

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A (relating to special rules for nuclear decommissioning costs) is amended to read as follows:

“(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.”.

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Section 468A(e) (relating to Nuclear Decommissioning Reserve Fund) is amended by adding at the end the following new paragraph:

“(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer’s interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

1           “(A) the transfer of such Fund shall not  
 2           cause such Fund to be disqualified from the ap-  
 3           plication of this section, and

4           “(B) no amount shall be treated as distrib-  
 5           uted from such Fund, or be includable in gross  
 6           income, by reason of such transfer.”.

7           (c) TREATMENT OF CERTAIN DECOMMISSIONING  
 8 COSTS.—

9           (1) IN GENERAL.—Section 468A is amended by  
 10          redesignating subsections (f) and (g) as subsections  
 11          (g) and (h), respectively, and by inserting after sub-  
 12          section (e) the following new subsection:

13          “(f) TRANSFERS INTO QUALIFIED FUNDS.—

14               “(1) IN GENERAL.—Notwithstanding subsection  
 15          (b), any taxpayer maintaining a Fund to which this  
 16          section applies with respect to a nuclear power plant  
 17          may transfer into such Fund not more than an  
 18          amount equal to the present value of the excess of  
 19          the total nuclear decommissioning costs with respect  
 20          to such nuclear power plant over the portion of such  
 21          costs taken into account in determining the ruling  
 22          amount in effect immediately before the transfer.

23          “(2) DEDUCTION FOR AMOUNTS TRANS-  
 24          FERRED.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (C), the deduction allowed by  
3           subsection (a) for any transfer permitted by  
4           this subsection shall be allowed ratably over the  
5           remaining estimated useful life (within the  
6           meaning of subsection (d)(2)(A)) of the nuclear  
7           power plant beginning with the taxable year  
8           during which the transfer is made.

9           “(B) DENIAL OF DEDUCTION FOR PRE-  
10          VIOUSLY DEDUCTED AMOUNTS.—No deduction  
11          shall be allowed for any transfer under this sub-  
12          section of an amount for which a deduction was  
13          previously allowed or a corresponding amount  
14          was not included in gross income. For purposes  
15          of the preceding sentence, a ratable portion of  
16          each transfer shall be treated as being from  
17          previously deducted or excluded amounts to the  
18          extent thereof.

19          “(C) TRANSFERS OF QUALIFIED FUNDS.—  
20          If—

21                 “(i) any transfer permitted by this  
22                 subsection is made to any Fund to which  
23                 this section applies, and

24                 “(ii) such Fund is transferred there-  
25                 after,

1           any deduction under this subsection for taxable  
 2           years ending after the date that such Fund is  
 3           transferred shall be allowed to the transferee  
 4           and not the transferor. The preceding sentence  
 5           shall not apply if the transferor is an entity ex-  
 6           empt from tax under this chapter.

7           “(D) SPECIAL RULES.—

8           “(i) GAIN OR LOSS NOT RECOG-  
 9           NIZED.—No gain or loss shall be recog-  
 10          nized on any transfer permitted by this  
 11          subsection.

12          “(ii) TRANSFERS OF APPRECIATED  
 13          PROPERTY.—If appreciated property is  
 14          transferred in a transfer permitted by this  
 15          subsection, the amount of the deduction  
 16          shall not exceed the adjusted basis of such  
 17          property.

18          “(3) NEW RULING AMOUNT REQUIRED.—Para-  
 19          graph (1) shall not apply to any transfer unless the  
 20          taxpayer requests from the Secretary a new schedule  
 21          of ruling amounts in connection with such transfer.

22          “(4) NO BASIS IN QUALIFIED FUNDS.—Not-  
 23          withstanding any other provision of law, the tax-  
 24          payer’s basis in any Fund to which this section ap-



1       plies shall not be increased by reason of any transfer  
2       permitted by this subsection.”.

3               (2) NEW RULING AMOUNT TO TAKE INTO AC-  
4       COUNT TOTAL COSTS.—Subparagraph (A) of section  
5       468A(d)(2) (defining ruling amount) is amended to  
6       read as follows:

7               “(A) fund the total nuclear decommis-  
8       sioning costs with respect to such power plant  
9       over the estimated useful life of such power  
10      plant, and”.

11      (d) TECHNICAL AMENDMENT.—Section 468A(e)(2)  
12   (relating to taxation of Fund) is amended—

13              (1) by striking “rate set forth in subparagraph  
14      (B)” in subparagraph (A) and inserting “rate of 20  
15      percent”,

16              (2) by striking subparagraph (B), and

17              (3) by redesignating subparagraphs (C) and  
18      (D) as subparagraphs (B) and (C), respectively.

19      (e) EFFECTIVE DATE.—The amendments made by  
20   this section shall apply to taxable years beginning after  
21   December 31, 2004.

22   **SEC. 856. TREATMENT OF CERTAIN INCOME OF COOPERA-**  
23                           **TIVES.**

24      (a) INCOME FROM OPEN ACCESS AND NUCLEAR DE-  
25   COMMISSIONING TRANSACTIONS.—

1           (1) IN GENERAL.—Section 501(c)(12)(C) (re-  
 2           lating to list of exempt organizations) is amended by  
 3           striking “or” at the end of clause (i), by striking  
 4           clause (ii), and by adding at the end the following  
 5           new clauses:

6                     “(ii) from any open access transaction  
 7                     (other than income received or accrued di-  
 8                     rectly or indirectly from a member),

9                     “(iii) from any nuclear decommis-  
 10                    sioning transaction,

11                    “(iv) from any asset exchange or con-  
 12                    version transaction, or

13                    “(v) from the prepayment of any loan,  
 14                    debt, or obligation made, insured, or guar-  
 15                    anteed under the Rural Electrification Act  
 16                    of 1936.”.

17           (2) DEFINITIONS AND SPECIAL RULES.—Sec-  
 18           tion 501(c)(12) is amended by adding at the end the  
 19           following new subparagraphs:

20                    “(E) For purposes of subparagraph  
 21                    (C)(ii)—

22                    “(i) The term ‘open access trans-  
 23                    action’ means any transaction meeting the  
 24                    open access requirements of any of the fol-

1           lowing subclauses with respect to a mutual  
2           or cooperative electric company:

3                   “(I) The provision or sale of elec-  
4                   tric transmission service or ancillary  
5                   services meets the open access re-  
6                   quirements of this subclause only if  
7                   such services are provided on a non-  
8                   discriminatory open access basis pur-  
9                   suant to an open access transmission  
10                  tariff filed with and approved by  
11                  FERC, including an acceptable reci-  
12                  procity tariff, or under a regional  
13                  transmission organization agreement  
14                  approved by FERC.

15                  “(II) The provision or sale of  
16                  electric energy distribution services or  
17                  ancillary services meets the open ac-  
18                  cess requirements of this subclause  
19                  only if such services are provided on a  
20                  nondiscriminatory open access basis to  
21                  end-users served by distribution facili-  
22                  ties owned by the mutual or coopera-  
23                  tive electric company (or its mem-  
24                  bers).

1                   “(III) The delivery or sale of  
2                   electric energy generated by a genera-  
3                   tion facility meets the open access re-  
4                   quirements of this subclause only if  
5                   such facility is directly connected to  
6                   distribution facilities owned by the  
7                   mutual or cooperative electric com-  
8                   pany (or its members) which owns the  
9                   generation facility, and such distribu-  
10                  tion facilities meet the open access re-  
11                  quirements of subclause (II).

12                  “(ii) Clause (i)(I) shall apply in the  
13                  case of a voluntarily filed tariff only if the  
14                  mutual or cooperative electric company  
15                  files a report with FERC within 90 days  
16                  after the date of the enactment of this sub-  
17                  paragraph relating to whether or not such  
18                  company will join a regional transmission  
19                  organization.

20                  “(iii) A mutual or cooperative electric  
21                  company shall be treated as meeting the  
22                  open access requirements of clause (i)(I) if  
23                  a regional transmission organization con-  
24                  trols the transmission facilities.

1 “(iv) References to FERC in this sub-  
2 paragraph shall be treated as including  
3 references to the Public Utility Commis-  
4 sion of Texas with respect to any ERCOT  
5 utility (as defined in section 212(k)(2)(B)  
6 of the Federal Power Act (16 U.S.C.  
7 824k(k)(2)(B))) or references to the Rural  
8 Utilities Service with respect to any other  
9 facility not subject to FERC jurisdiction.

10 “(v) For purposes of this subpara-  
11 graph—

12 “(I) The term ‘transmission facil-  
13 ity’ means an electric output facility  
14 (other than a generation facility)  
15 which operates at an electric voltage  
16 of 69 kilovolts or greater. To the ex-  
17 tent provided in regulations, such  
18 term includes any output facility  
19 which FERC determines is a trans-  
20 mission facility under standards ap-  
21 plied by FERC under the Federal  
22 Power Act (as in effect on the date of  
23 the enactment of the Energy Tax In-  
24 centives Act).

1                   “(II) The term ‘regional trans-  
2                   mission organization’ includes an  
3                   independent system operator.

4                   “(III) The term ‘FERC’ means  
5                   the Federal Energy Regulatory Com-  
6                   mission.

7                   “(F) The term ‘nuclear decommissioning  
8                   transaction’ means—

9                   “(i) any transfer into a trust, fund, or  
10                  instrument established to pay any nuclear  
11                  decommissioning costs if the transfer is in  
12                  connection with the transfer of the mutual  
13                  or cooperative electric company’s interest  
14                  in a nuclear power plant or nuclear power  
15                  plant unit,

16                  “(ii) any distribution from any trust,  
17                  fund, or instrument established to pay any  
18                  nuclear decommissioning costs, or

19                  “(iii) any earnings from any trust,  
20                  fund, or instrument established to pay any  
21                  nuclear decommissioning costs.

22                  “(G) The term ‘asset exchange or conver-  
23                  sion transaction’ means any voluntary exchange  
24                  or involuntary conversion of any property re-  
25                  lated to generating, transmitting, distributing,

1 or selling electric energy by a mutual or cooper-  
 2 ative electric company, the gain from which  
 3 qualifies for deferred recognition under section  
 4 1031 or 1033, but only if the replacement prop-  
 5 erty acquired by such company pursuant to  
 6 such section constitutes property which is used,  
 7 or to be used, for—

8 “(i) generating, transmitting, distrib-  
 9 uting, or selling electric energy, or

10 “(ii) producing, transmitting, distrib-  
 11 uting, or selling natural gas.”.

12 (b) TREATMENT OF INCOME FROM LOAD LOSS  
 13 TRANSACTIONS.—Section 501(c)(12), as amended by sub-  
 14 section (a)(2), is amended by adding after subparagraph  
 15 (G) the following new subparagraph:

16 “(H)(i) In the case of a mutual or coopera-  
 17 tive electric company described in this para-  
 18 graph or an organization described in section  
 19 1381(a)(2)(C), income received or accrued from  
 20 a load loss transaction shall be treated as an  
 21 amount collected from members for the sole  
 22 purpose of meeting losses and expenses.

23 “(ii) For purposes of clause (i), the term  
 24 ‘load loss transaction’ means any wholesale or  
 25 retail sale of electric energy (other than to

1 members) to the extent that the aggregate sales  
2 during the recovery period do not exceed the  
3 load loss mitigation sales limit for such period.

4 “(iii) For purposes of clause (ii), the load  
5 loss mitigation sales limit for the recovery pe-  
6 riod is the sum of the annual load losses for  
7 each year of such period.

8 “(iv) For purposes of clause (iii), a mutual  
9 or cooperative electric company’s annual load  
10 loss for each year of the recovery period is the  
11 amount (if any) by which—

12 “(I) the megawatt hours of electric  
13 energy sold during such year to members  
14 of such electric company are less than

15 “(II) the megawatt hours of electric  
16 energy sold during the base year to such  
17 members.

18 “(v) For purposes of clause (iv)(II), the  
19 term ‘base year’ means—

20 “(I) the calendar year preceding the  
21 start-up year, or

22 “(II) at the election of the electric  
23 company, the second or third calendar  
24 years preceding the start-up year.



1           “(vi) For purposes of this subparagraph,  
2           the recovery period is the 7-year period begin-  
3           ning with the start-up year.

4           “(vii) For purposes of this subparagraph,  
5           the start-up year is the calendar year which in-  
6           cludes January 1, 2005, or, if later, at the elec-  
7           tion of the mutual or cooperative electric com-  
8           pany—

9                   “(I) the first year that such electric  
10                  company offers nondiscriminatory open ac-  
11                  cess, or

12                   “(II) the first year in which at least  
13                  10 percent of such electric company’s sales  
14                  are not to members of such electric com-  
15                  pany.

16           “(viii) A company shall not fail to be treat-  
17           ed as a mutual or cooperative company for pur-  
18           poses of this paragraph or as a corporation op-  
19           erating on a cooperative basis for purposes of  
20           section 1381(a)(2)(C) by reason of the treat-  
21           ment under clause (i).

22           “(ix) In the case of a mutual or coopera-  
23           tive electric company, income from any open ac-  
24           cess transaction received, or accrued, indirectly  
25           from a member shall be treated as an amount

1 collected from members for the sole purpose of  
 2 meeting losses and expenses.”.

3 (c) EXCEPTION FROM UNRELATED BUSINESS TAX-  
 4 ABLE INCOME.—Section 512(b) (relating to modifica-  
 5 tions), as amended by this Act, is amended by adding at  
 6 the end the following new paragraph:

7 “(20) TREATMENT OF MUTUAL OR COOPERA-  
 8 TIVE ELECTRIC COMPANIES.—In the case of a mu-  
 9 tual or cooperative electric company described in sec-  
 10 tion 501(c)(12), there shall be excluded income  
 11 which is treated as member income under subpara-  
 12 graph (H) thereof.”.

13 (d) CROSS REFERENCE.—Section 1381 is amended  
 14 by adding at the end the following new subsection:

15 “(c) CROSS REFERENCE.—

**“For treatment of income from load loss trans-  
 actions of organizations described in subsection  
 (a)(2)(C), see section 501(c)(12)(H).”.**

16 (e) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to taxable years beginning after  
 18 December 31, 2004.

1 **SEC. 857. SALES OR DISPOSITIONS TO IMPLEMENT FED-**  
 2 **ERAL ENERGY REGULATORY COMMISSION**  
 3 **OR STATE ELECTRIC RESTRUCTURING POL-**  
 4 **ICY.**

5 (a) IN GENERAL.—Section 451 (relating to general  
 6 rule for taxable year of inclusion) is amended by adding  
 7 at the end the following new subsection:

8 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO  
 9 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-  
 10 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

11 “(1) IN GENERAL.—For purposes of this sub-  
 12 title, if a taxpayer elects the application of this sub-  
 13 section to a qualifying electric transmission trans-  
 14 action in any taxable year—

15 “(A) any ordinary income derived from  
 16 such transaction which would be required to be  
 17 recognized under section 1245 or 1250 for such  
 18 taxable year (determined without regard to this  
 19 subsection), and

20 “(B) any income derived from such trans-  
 21 action in excess of such ordinary income which  
 22 is required to be included in gross income for  
 23 such taxable year (determined without regard to  
 24 this subsection),

1 shall be so recognized and included ratably over the  
2 8-taxable year period beginning with such taxable  
3 year.

4 “(2) QUALIFYING ELECTRIC TRANSMISSION  
5 TRANSACTION.—For purposes of this subsection, the  
6 term ‘qualifying electric transmission transaction’  
7 means any sale or other disposition before January  
8 1, 2008, of—

9 “(A) property used by the taxpayer in the  
10 trade or business of providing electric trans-  
11 mission services, or

12 “(B) any stock or partnership interest in a  
13 corporation or partnership, as the case may be,  
14 whose principal trade or business consists of  
15 providing electric transmission services,  
16 but only if such sale or disposition is to an inde-  
17 pendent transmission company.

18 “(3) INDEPENDENT TRANSMISSION COM-  
19 PANY.—For purposes of this subsection, the term  
20 ‘independent transmission company’ means—

21 “(A) a regional transmission organization  
22 approved by the Federal Energy Regulatory  
23 Commission,

24 “(B) a person—

1           “(i) who the Federal Energy Regu-  
2           latory Commission determines in its au-  
3           thorization of the transaction under section  
4           203 of the Federal Power Act (16 U.S.C.  
5           824b) is not a market participant within  
6           the meaning of such Commission’s rules  
7           applicable to regional transmission organi-  
8           zations, and

9           “(ii) whose transmission facilities to  
10          which the election under this subsection  
11          applies are under the operational control of  
12          a Federal Energy Regulatory Commission-  
13          approved regional transmission organiza-  
14          tion before the close of the period specified  
15          in such authorization, but not later than  
16          January 1, 2008, or

17          “(C) in the case of facilities subject to the  
18          exclusive jurisdiction of the Public Utility Com-  
19          mission of Texas, a person which is approved by  
20          that Commission as consistent with Texas State  
21          law regarding an independent transmission or-  
22          ganization.

23          “(4) ELECTION.—An election under paragraph  
24          (1), once made, shall be irrevocable.

1           “(5) NONAPPLICATION OF INSTALLMENT SALES  
2           TREATMENT.—Section 453 shall not apply to any  
3           qualifying electric transmission transaction with re-  
4           spect to which an election to apply this subsection  
5           is made.”.

6           (b) EFFECTIVE DATE.—The amendment made by  
7           this section shall apply to transactions occurring after De-  
8           cember 31, 2004.

## 9           **Subtitle G—Volumetric Ethanol** 10           **Excise Tax Credit**

### 11   **SEC. 860. SHORT TITLE.**

12           This subtitle may be cited as the “Volumetric Eth-  
13           anol Excise Tax Credit (VEETC) Act of 2004”.

### 14   **SEC. 861. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT** 15                   **AND EXTENSION OF ALCOHOL FUELS IN-** 16                   **COME TAX CREDIT.**

17           (a) IN GENERAL.—Subchapter B of chapter 65 (re-  
18           lating to rules of special application) is amended by insert-  
19           ing after section 6425 the following new section:

### 20   **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL** 21                   **MIXTURES.**

22           “(a) ALLOWANCE OF CREDITS.—There shall be al-  
23           lowed as a credit against the tax imposed by section 4081  
24           an amount equal to the sum of—

25                   “(1) the alcohol fuel mixture credit, plus

1 “(2) the biodiesel mixture credit.

2 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

3 “(1) IN GENERAL.—For purposes of this sec-  
4 tion, the alcohol fuel mixture credit is the product  
5 of the applicable amount and the number of gallons  
6 of alcohol used by the taxpayer in producing any al-  
7 cohool fuel mixture for sale or use in a trade or busi-  
8 ness of the taxpayer.

9 “(2) APPLICABLE AMOUNT.—For purposes of  
10 this subsection—

11 “(A) IN GENERAL.—Except as provided in  
12 subparagraph (B), the applicable amount is 52  
13 cents (51 cents in the case of any sale or use  
14 after 2004).

15 “(B) MIXTURES NOT CONTAINING ETH-  
16 ANOL.—In the case of an alcohol fuel mixture  
17 in which none of the alcohol consists of ethanol,  
18 the applicable amount is 60 cents.

19 “(3) ALCOHOL FUEL MIXTURE.—For purposes  
20 of this subsection, the term ‘alcohol fuel mixture’  
21 means a mixture of alcohol and a taxable fuel  
22 which—

23 “(A) is sold by the taxpayer producing  
24 such mixture to any person for use as a fuel,

1           “(B) is used as a fuel by the taxpayer pro-  
2           ducing such mixture, or

3           “(C) is removed from the refinery by a  
4           person producing such mixture.

5           “(4) OTHER DEFINITIONS.—For purposes of  
6           this subsection—

7           “(A) ALCOHOL.—The term ‘alcohol’ in-  
8           cludes methanol and ethanol but does not in-  
9           clude—

10           “(i) alcohol produced from petroleum,  
11           natural gas, or coal (including peat), or

12           “(ii) alcohol with a proof of less than  
13           190 (determined without regard to any  
14           added denaturants).

15           Such term also includes an alcohol gallon equiv-  
16           alent of ethyl tertiary butyl ether or other  
17           ethers produced from such alcohol.

18           “(B) TAXABLE FUEL.—The term ‘taxable  
19           fuel’ has the meaning given such term by sec-  
20           tion 4083(a)(1).

21           “(5) TERMINATION.—This subsection shall not  
22           apply to any sale, use, or removal for any period  
23           after December 31, 2010.

24           “(c) BIODIESEL MIXTURE CREDIT.—



1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the biodiesel mixture credit is the product of  
3           the applicable amount and the number of gallons of  
4           biodiesel used by the taxpayer in producing any bio-  
5           diesel mixture for sale or use in a trade or business  
6           of the taxpayer.

7           “(2) APPLICABLE AMOUNT.—For purposes of  
8           this subsection—

9                   “(A) IN GENERAL.—Except as provided in  
10                  subparagraph (B), the applicable amount is 50  
11                  cents.

12                   “(B) AMOUNT FOR AGRI-BIODIESEL.—In  
13                  the case of any biodiesel which is agri-biodiesel,  
14                  the applicable amount is \$1.00.

15           “(3) BIODIESEL MIXTURE.—For purposes of  
16           this section, the term ‘biodiesel mixture’ means a  
17           mixture of biodiesel and diesel fuel (as defined in  
18           section 4083(a)(3)), determined without regard to  
19           any use of kerosene, which—

20                   “(A) is sold by the taxpayer producing  
21                  such mixture to any person for use as a fuel,

22                   “(B) is used as a fuel by the taxpayer pro-  
23                  ducing such mixture, or

24                   “(C) is removed from the refinery by a  
25                  person producing such mixture.

1           “(4) CERTIFICATION FOR BIODIESEL.—No  
 2           credit shall be allowed under this section unless the  
 3           taxpayer obtains a certification (in such form and  
 4           manner as prescribed by the Secretary) from the  
 5           producer of the biodiesel which identifies the product  
 6           produced and the percentage of biodiesel and agri-  
 7           biodiesel in the product.

8           “(5) OTHER DEFINITIONS.—Any term used in  
 9           this subsection which is also used in section 40A  
 10          shall have the meaning given such term by section  
 11          40A.

12          “(6) TERMINATION.—This subsection shall not  
 13          apply to any sale, use, or removal for any period  
 14          after December 31, 2006.

15          “(d) MIXTURE NOT USED AS A FUEL, ETC.—

16               “(1) IMPOSITION OF TAX.—If—

17                   “(A) any credit was determined under this  
 18                   section with respect to alcohol or biodiesel used  
 19                   in the production of any alcohol fuel mixture or  
 20                   biodiesel mixture, respectively, and

21                   “(B) any person—

22                           “(i) separates the alcohol or biodiesel  
 23                           from the mixture, or

24                           “(ii) without separation, uses the mix-  
 25                           ture other than as a fuel,

1           then there is hereby imposed on such person a  
 2           tax equal to the product of the applicable  
 3           amount and the number of gallons of such alco-  
 4           hol or biodiesel.

5           “(2) APPLICABLE LAWS.—All provisions of law,  
 6           including penalties, shall, insofar as applicable and  
 7           not inconsistent with this section, apply in respect of  
 8           any tax imposed under paragraph (1) as if such tax  
 9           were imposed by section 4081 and not by this sec-  
 10          tion.

11          “(e) COORDINATION WITH EXEMPTION FROM EX-  
 12          CISE TAX.—Rules similar to the rules under section 40(c)  
 13          shall apply for purposes of this section.”.

14          (b)       REGISTRATION       REQUIREMENT.—Section  
 15          4101(a)(1) (relating to registration), as amended by sec-  
 16          tions 871 and 880 of this Act, is amended by inserting  
 17          “and every person producing or importing biodiesel (as de-  
 18          fined in section 40A(d)(1)) or alcohol (as defined in sec-  
 19          tion 6426(b)(4)(A))” after “4081”.

20          (c) ADDITIONAL AMENDMENTS.—

21               (1) Section 40(c) is amended by striking “sub-  
 22          section (b)(2), (k), or (m) of section 4041, section  
 23          4081(c), or section 4091(c)” and inserting “section  
 24          4041(b)(2), section 6426, or section 6427(e)”.

1           (2) Paragraph (4) of section 40(d) is amended  
2           to read as follows:

3           “(4) VOLUME OF ALCOHOL.—For purposes of  
4           determining under subsection (a) the number of gal-  
5           lons of alcohol with respect to which a credit is al-  
6           lowable under subsection (a), the volume of alcohol  
7           shall include the volume of any denaturant (includ-  
8           ing gasoline) which is added under any formulas ap-  
9           proved by the Secretary to the extent that such de-  
10          naturants do not exceed 5 percent of the volume of  
11          such alcohol (including denaturants).”.

12          (3) Section 40(e)(1) is amended—

13                (A) by striking “2007” in subparagraph  
14                (A) and inserting “2010”, and

15                (B) by striking “2008” in subparagraph  
16                (B) and inserting “2011”.

17          (4) Section 40(h) is amended—

18                (A) by striking “2007” in paragraph (1)  
19                and inserting “2010”, and

20                (B) by striking “, 2006, or 2007” in the  
21                table contained in paragraph (2) and inserting  
22                “through 2010”.

23          (5) Section 4041(b)(2)(B) is amended by strik-  
24          ing “a substance other than petroleum or natural  
25          gas” and inserting “coal (including peat)”.

1           (6) Section 4041 is amended by striking sub-  
2       section (k).

3           (7) Section 4081 is amended by striking sub-  
4       section (c).

5           (8) Paragraph (2) of section 4083(a) is amend-  
6       ed to read as follows:

7           “(2) GASOLINE.—The term ‘gasoline’—

8               “(A) includes any gasoline blend, other  
9               than qualified methanol or ethanol fuel (as de-  
10              fined in section 4041(b)(2)(B)), partially ex-  
11              empt methanol or ethanol fuel (as defined in  
12              section 4041(m)(2)), or a denatured alcohol,  
13              and

14               “(B) includes, to the extent prescribed in  
15              regulations—

16                   “(i) any gasoline blend stock, and

17                   “(ii) any product commonly used as  
18                  an additive in gasoline (other than alco-  
19                  hol).

20       For purposes of subparagraph (B)(i), the term ‘gas-  
21       oline blend stock’ means any petroleum product  
22       component of gasoline.”.

23           (9) Section 6427 is amended by inserting after  
24       subsection (d) the following new subsection:

1       “(e) ALCOHOL OR BIODIESEL USED TO PRODUCE  
2 ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS  
3 FUELS.—Except as provided in subsection (k)—

4               “(1) USED TO PRODUCE A MIXTURE.—If any  
5 person produces a mixture described in section 6426  
6 in such person’s trade or business, the Secretary  
7 shall pay (without interest) to such person an  
8 amount equal to the alcohol fuel mixture credit or  
9 the biodiesel mixture credit with respect to such mix-  
10 ture.

11              “(2) USED AS FUEL.—If alcohol (as defined in  
12 section 40(d)(1)) or biodiesel (as defined in section  
13 40A(d)(1)) or agri-biodiesel (as defined in section  
14 40A(d)(2)) which is not in a mixture described in  
15 section 6426—

16                   “(A) is used by any person as a fuel in a  
17 trade or business, or

18                   “(B) is sold by any person at retail to an-  
19 other person and placed in the fuel tank of such  
20 person’s vehicle,

21 the Secretary shall pay (without interest) to such  
22 person an amount equal to the alcohol credit (as de-  
23 termined under section 40(b)(2)) or the biodiesel  
24 credit (as determined under section 40A(b)(2)) with  
25 respect to such fuel.

1           “(3) COORDINATION WITH OTHER REPAYMENT  
2 PROVISIONS.—No amount shall be payable under  
3 paragraph (1) with respect to any mixture with re-  
4 spect to which an amount is allowed as a credit  
5 under section 6426.

6           “(4) TERMINATION.—This subsection shall not  
7 apply with respect to—

8                 “(A) any alcohol fuel mixture (as defined  
9 in section 6426(b)(3)) or alcohol (as so defined)  
10 sold or used after December 31, 2010, and

11                “(B) any biodiesel mixture (as defined in  
12 section 6426(c)(3)) or biodiesel (as so defined)  
13 or agri-biodiesel (as so defined) sold or used  
14 after December 31, 2006.”.

15           (10) Section 6427(i)(3) is amended—

16                 (A) by striking “subsection (f)” both  
17 places it appears in subparagraph (A) and in-  
18 serting “subsection (e)(1)”,

19                 (B) by striking “gasoline, diesel fuel, or  
20 kerosene used to produce a qualified alcohol  
21 mixture (as defined in section 4081(c)(3))” in  
22 subparagraph (A) and inserting “a mixture de-  
23 scribed in section 6426”,

24                 (C) by adding at the end of subparagraph  
25 (A) the following new flush sentence:

1 “In the case of an electronic claim, this sub-  
2 paragraph shall be applied without regard to  
3 clause (i).”,

4 (D) by striking “subsection (f)(1)” in sub-  
5 paragraph (B) and inserting “subsection  
6 (e)(1)”,

7 (E) by striking “20 days of the date of the  
8 filing of such claim” in subparagraph (B) and  
9 inserting “45 days of the date of the filing of  
10 such claim (20 days in the case of an electronic  
11 claim)”, and

12 (F) by striking “ALCOHOL MIXTURE” in  
13 the heading and inserting “ALCOHOL FUEL AND  
14 BIODIESEL MIXTURE”.

15 (11) Section 9503(b)(1) is amended by adding  
16 at the end the following new flush sentence:

17 “For purposes of this paragraph, taxes received  
18 under sections 4041 and 4081 shall be determined  
19 without reduction for credits under section 6426.”.

20 (12) Section 9503(b)(4) is amended—

21 (A) by adding “or” at the end of subpara-  
22 graph (C),

23 (B) by striking the comma at the end of  
24 subparagraph (D)(iii) and inserting a period,  
25 and



1 (C) by striking subparagraphs (E) and  
 2 (F).

3 (13) The table of sections for subchapter B of  
 4 chapter 65 is amended by inserting after the item  
 5 relating to section 6425 the following new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

6 (14) TARIFF SCHEDULE.—Headings  
 7 9901.00.50 and 9901.00.52 of the Harmonized Tar-  
 8 iff Schedule of the United States (19 U.S.C. 3007)  
 9 are each amended in the effective period column by  
 10 striking “10/1/2007” each place it appears and in-  
 11 serting “1/1/2011”.

12 (d) EFFECTIVE DATES.—

13 (1) IN GENERAL.—Except as otherwise pro-  
 14 vided in this subsection, the amendments made by  
 15 this section shall apply to fuel sold or used after  
 16 September 30, 2004.

17 (2) REGISTRATION REQUIREMENT.—The  
 18 amendment made by subsection (b) shall take effect  
 19 on April 1, 2005.

20 (3) EXTENSION OF ALCOHOL FUELS CREDIT.—  
 21 The amendments made by paragraphs (3), (4), and  
 22 (14) of subsection (c) shall take effect on the date  
 23 of the enactment of this Act.

24 (4) REPEAL OF GENERAL FUND RETENTION OF  
 25 CERTAIN ALCOHOL FUELS TAXES.—The amend-

1       ments made by subsection (c)(12) shall apply to fuel  
2       sold or used after September 30, 2003.

3       (e) **FORMAT FOR FILING.**—The Secretary of the  
4 Treasury shall describe the electronic format for filing  
5 claims described in section 6427(i)(3)(B) of the Internal  
6 Revenue Code of 1986 (as amended by subsection  
7 (c)(10)(C)) not later than September 30, 2004.

8       **SEC. 862. BIODIESEL INCOME TAX CREDIT.**

9       (a) **IN GENERAL.**—Subpart D of part IV of sub-  
10 chapter A of chapter 1 (relating to business related cred-  
11 its), as amended by this Act, is amended by inserting after  
12 section 40A the following new section:

13       **“SEC. 40B. BIODIESEL USED AS FUEL.**

14       “(a) **GENERAL RULE.**—For purposes of section 38,  
15 the biodiesel fuels credit determined under this section for  
16 the taxable year is an amount equal to the sum of—

17               “(1) the biodiesel mixture credit, plus

18               “(2) the biodiesel credit.

19       “(b) **DEFINITION OF BIODIESEL MIXTURE CREDIT**  
20 **AND BIODIESEL CREDIT.**—For purposes of this section—

21               “(1) **BIODIESEL MIXTURE CREDIT.**—

22                       “(A) **IN GENERAL.**—The biodiesel mixture  
23 credit of any taxpayer for any taxable year is  
24 50 cents for each gallon of biodiesel used by the

1 taxpayer in the production of a qualified bio-  
2 diesel mixture.

3 “(B) QUALIFIED BIODIESEL MIXTURE.—  
4 The term ‘qualified biodiesel mixture’ means a  
5 mixture of biodiesel and diesel fuel (as defined  
6 in section 4083(a)(3)), determined without re-  
7 gard to any use of kerosene, which—

8 “(i) is sold by the taxpayer producing  
9 such mixture to any person for use as a  
10 fuel, or

11 “(ii) is used as a fuel by the taxpayer  
12 producing such mixture.

13 “(C) SALE OR USE MUST BE IN TRADE OR  
14 BUSINESS, ETC.—Biodiesel used in the produc-  
15 tion of a qualified biodiesel mixture shall be  
16 taken into account—

17 “(i) only if the sale or use described  
18 in subparagraph (B) is in a trade or busi-  
19 ness of the taxpayer, and

20 “(ii) for the taxable year in which  
21 such sale or use occurs.

22 “(D) CASUAL OFF-FARM PRODUCTION NOT  
23 ELIGIBLE.—No credit shall be allowed under  
24 this section with respect to any casual off-farm  
25 production of a qualified biodiesel mixture.

1 “(2) BIODIESEL CREDIT.—

2 “(A) IN GENERAL.—The biodiesel credit of  
3 any taxpayer for any taxable year is 50 cents  
4 for each gallon of biodiesel which is not in a  
5 mixture with diesel fuel and which during the  
6 taxable year—

7 “(i) is used by the taxpayer as a fuel  
8 in a trade or business, or

9 “(ii) is sold by the taxpayer at retail  
10 to a person and placed in the fuel tank of  
11 such person’s vehicle.

12 “(B) USER CREDIT NOT TO APPLY TO BIO-  
13 DIESEL SOLD AT RETAIL.—No credit shall be  
14 allowed under subparagraph (A)(i) with respect  
15 to any biodiesel which was sold in a retail sale  
16 described in subparagraph (A)(ii).

17 “(3) CREDIT FOR AGRI-BIODIESEL.—In the  
18 case of any biodiesel which is agri-biodiesel, para-  
19 graphs (1)(A) and (2)(A) shall be applied by sub-  
20 stituting ‘\$1.00’ for ‘50 cents’.

21 “(4) CERTIFICATION FOR BIODIESEL.—No  
22 credit shall be allowed under this section unless the  
23 taxpayer obtains a certification (in such form and  
24 manner as prescribed by the Secretary) from the  
25 producer or importer of the biodiesel which identifies

1 the product produced and the percentage of biodiesel  
2 and agri-biodiesel in the product.

3 “(c) COORDINATION WITH CREDIT AGAINST EXCISE  
4 TAX.—The amount of the credit determined under this  
5 section with respect to any biodiesel shall be properly re-  
6 duced to take into account any benefit provided with re-  
7 spect to such biodiesel solely by reason of the application  
8 of section 6426 or 6427(e).

9 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
10 poses of this section—

11 “(1) BIODIESEL.—The term ‘biodiesel’ means  
12 the monoalkyl esters of long chain fatty acids de-  
13 rived from plant or animal matter which meet—

14 “(A) the registration requirements for  
15 fuels and fuel additives established by the Envi-  
16 ronmental Protection Agency under section 211  
17 of the Clean Air Act (42 U.S.C. 7545), and

18 “(B) the requirements of the American So-  
19 ciety of Testing and Materials D6751.

20 “(2) AGRI-BIODIESEL.—The term ‘agri-bio-  
21 diesel’ means biodiesel derived solely from virgin oils,  
22 including esters derived from virgin vegetable oils  
23 from corn, soybeans, sunflower seeds, cottonseeds,  
24 canola, crambe, rapeseeds, safflowers, flaxseeds, rice  
25 bran, and mustard seeds, and from animal fats.

1           “(3) MIXTURE OR BIODIESEL NOT USED AS A  
2 FUEL, ETC.—

3           “(A) MIXTURES.—If—

4               “(i) any credit was determined under  
5 this section with respect to biodiesel used  
6 in the production of any qualified biodiesel  
7 mixture, and

8               “(ii) any person—

9                   “(I) separates the biodiesel from  
10 the mixture, or

11                   “(II) without separation, uses the  
12 mixture other than as a fuel,

13 then there is hereby imposed on such person a  
14 tax equal to the product of the rate applicable  
15 under subsection (b)(1)(A) and the number of  
16 gallons of such biodiesel in such mixture.

17           “(B) BIODIESEL.—If—

18               “(i) any credit was determined under  
19 this section with respect to the retail sale  
20 of any biodiesel, and

21               “(ii) any person mixes such biodiesel  
22 or uses such biodiesel other than as a fuel,  
23 then there is hereby imposed on such person a  
24 tax equal to the product of the rate applicable

1 under subsection (b)(2)(A) and the number of  
 2 gallons of such biodiesel.

3 “(C) APPLICABLE LAWS.—All provisions of  
 4 law, including penalties, shall, insofar as appli-  
 5 cable and not inconsistent with this section,  
 6 apply in respect of any tax imposed under sub-  
 7 paragraph (A) or (B) as if such tax were im-  
 8 posed by section 4081 and not by this chapter.

9 “(4) PASS-THRU IN THE CASE OF ESTATES AND  
 10 TRUSTS.—Under regulations prescribed by the Sec-  
 11 retary, rules similar to the rules of subsection (d) of  
 12 section 52 shall apply.

13 “(e) TERMINATION.—This section shall not apply to  
 14 any sale or use after December 31, 2006.”.

15 (b) CREDIT TREATED AS PART OF GENERAL BUSI-  
 16 NESS CREDIT.—Section 38(b) (relating to current year  
 17 business credit), as amended by this Act, is amended by  
 18 striking “plus” at the end of paragraph (28), by striking  
 19 the period at the end of paragraph (29) and inserting “,  
 20 plus”, and by adding at the end the following new para-  
 21 graph:

22 “(30) the biodiesel fuels credit determined  
 23 under section 40B(a).”.

24 (c) CONFORMING AMENDMENTS.—

1           (1)(A) Section 87, as amended by this Act, is  
2 amended—

3           (i) by striking “and” at the end of para-  
4 graph (1),

5           (ii) by striking the period at the end of  
6 paragraph (2) and inserting “, and”,

7           (iii) by adding at the end the following new  
8 paragraph:

9           “(3) the biodiesel fuels credit determined with  
10 respect to the taxpayer for the taxable year under  
11 section 40B(a).”, and

12           (iv) by striking “**FUEL CREDIT**” in the head-  
13 ing and inserting “**AND BIODIESEL FUELS CRED-**  
14 **ITS**”.

15           (B) The item relating to section 87 in the table  
16 of sections for part II of subchapter B of chapter 1  
17 is amended by striking “fuel credit” and inserting  
18 “and biodiesel fuels credits”.

19           (2) Section 196(c), as amended by this Act, is  
20 amended by striking “and” at the end of paragraph  
21 (11), by striking the period at the end of paragraph  
22 (12) and inserting “, and”, and by adding at the  
23 end the following new paragraph:

24           “(13) the biodiesel fuels credit determined  
25 under section 40B(a).”.



1           (3) The table of sections for subpart D of part  
 2           IV of subchapter A of chapter 1 is amended by add-  
 3           ing after the item relating to section 40 the fol-  
 4           lowing new item:

                  “Sec. 40B. Biodiesel used as fuel.”.

5           (d) EFFECTIVE DATE.—The amendments made by  
 6           this section shall apply to fuel produced, and sold or used,  
 7           after September 30, 2004, in taxable years ending after  
 8           such date.

## 9       **Subtitle H—Fuel Fraud Prevention**

### 10      **SEC. 870. SHORT TITLE.**

11           This subtitle may be cited as the “Fuel Fraud Pre-  
 12          vention Act of 2004”.

## 13                   **PART I—AVIATION JET FUEL**

### 14      **SEC. 871. TAXATION OF AVIATION-GRADE KEROSENE.**

15           (a) RATE OF TAX.—

16           (1) IN GENERAL.—Subparagraph (A) of section  
 17          4081(a)(2) is amended by striking “and” at the end  
 18          of clause (ii), by striking the period at the end of  
 19          clause (iii) and inserting “, and”, and by adding at  
 20          the end the following new clause:

21                   “(iv) in the case of aviation-grade ker-  
 22                   osene, 21.8 cents per gallon.”.

23           (2) COMMERCIAL AVIATION.—Paragraph (2) of  
 24          section 4081(a) is amended by adding at the end the  
 25          following new subparagraph:

1           “(C) TAXES IMPOSED ON FUEL USED IN  
 2           COMMERCIAL AVIATION.—In the case of avia-  
 3           tion-grade kerosene which is removed from any  
 4           refinery or terminal directly into the fuel tank  
 5           of an aircraft for use in commercial aviation,  
 6           the rate of tax under subparagraph (A)(iv) shall  
 7           be 4.3 cents per gallon.”.

8           (3) NONTAXABLE USES.—

9           (A) IN GENERAL.—Section 4082 is amend-  
 10          ed by redesignating subsections (e) and (f) as  
 11          subsections (f) and (g), respectively, and by in-  
 12          serting after subsection (d) the following new  
 13          subsection:

14          “(e) AVIATION-GRADE KEROSENE.—In the case of  
 15          aviation-grade kerosene which is exempt from the tax im-  
 16          posed by section 4041(c) (other than by reason of a prior  
 17          imposition of tax) and which is removed from any refinery  
 18          or terminal directly into the fuel tank of an aircraft, the  
 19          rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

20          (B) CONFORMING AMENDMENTS.—

21                 (i) Subsection (b) of section 4082 is  
 22          amended by adding at the end the fol-  
 23          lowing new flush sentence: “The term  
 24          ‘nontaxable use’ does not include the use  
 25          of aviation-grade kerosene in an aircraft.”.

1 (ii) Section 4082(d) is amended by  
2 striking paragraph (1) and by redesign-  
3 nating paragraphs (2) and (3) as para-  
4 graphs (1) and (2), respectively.

5 (4) NONAIRCRAFT USE OF AVIATION-GRADE  
6 KEROSENE.—

7 (A) IN GENERAL.—Subparagraph (B) of  
8 section 4041(a)(1) is amended by adding at the  
9 end the following new sentence: “This subpara-  
10 graph shall not apply to aviation-grade ker-  
11 osene.”.

12 (B) CONFORMING AMENDMENT.—The  
13 heading for paragraph (1) of section 4041(a) is  
14 amended by inserting “AND KEROSENE” after  
15 “DIESEL FUEL”.

16 (b) COMMERCIAL AVIATION.—Section 4083 is  
17 amended redesignating subsections (b) and (c) as sub-  
18 sections (c) and (d), respectively, and by inserting after  
19 subsection (a) the following new subsection:

20 “(b) COMMERCIAL AVIATION.—For purposes of this  
21 subpart, the term ‘commercial aviation’ means any use of  
22 an aircraft in a business of transporting persons or prop-  
23 erty for compensation or hire by air, unless properly allo-  
24 cable to any transportation exempt from the taxes imposed

1 by section 4261 and 4271 by reason of section 4281 or  
 2 4282 or by reason of section 4261(h).”.

3 (c) REFUNDS.—

4 (1) IN GENERAL.—Paragraph (4) of section  
 5 6427(l) is amended to read as follows:

6 “(4) REFUNDS FOR AVIATION-GRADE KER-  
 7 OSENE.—

8 “(A) NO REFUND OF CERTAIN TAXES ON  
 9 FUEL USED IN COMMERCIAL AVIATION.—In the  
 10 case of aviation-grade kerosene used in com-  
 11 mercial aviation (as defined in section 4083(b))  
 12 (other than supplies for vessels or aircraft with-  
 13 in the meaning of section 4221(d)(3)), para-  
 14 graph (1) shall not apply to so much of the tax  
 15 imposed by section 4081 as is attributable to—

16 “(i) the Leaking Underground Stor-  
 17 age Tank Trust Fund financing rate im-  
 18 posed by such section, and

19 “(ii) so much of the rate of tax speci-  
 20 fied in section 4081(a)(2)(A)(iv) as does  
 21 not exceed 4.3 cents per gallon.

22 “(B) PAYMENT TO ULTIMATE, REG-  
 23 ISTERED VENDOR.—With respect to aviation-  
 24 grade kerosene, if the ultimate purchaser of  
 25 such kerosene waives (at such time and in such

1 form and manner as the Secretary shall pre-  
 2 scribe) the right to payment under paragraph  
 3 (1) and assigns such right to the ultimate ven-  
 4 dor, then the Secretary shall pay the amount  
 5 which would be paid under paragraph (1) to  
 6 such ultimate vendor, but only if such ultimate  
 7 vendor—

8 “(i) is registered under section 4101,  
 9 and

10 “(ii) meets the requirements of sub-  
 11 paragraph (A), (B), or (D) of section  
 12 6416(a)(1).”.

13 (2) TIME FOR FILING CLAIMS.—Subparagraph  
 14 (A) of section 6427(i)(4) is amended—

15 (A) by striking “subsection (l)(5)” both  
 16 places it appears and inserting “paragraph  
 17 (4)(B) or (5) of subsection (l)”, and

18 (B) by striking “the preceding sentence”  
 19 and inserting “subsection (l)(5)”.

20 (3) CONFORMING AMENDMENT.—Subparagraph  
 21 (B) of section 6427(l)(2) is amended to read as fol-  
 22 lows:

23 “(B) in the case of aviation-grade ker-  
 24 osene—

1                   “(i) any use which is exempt from the  
 2                   tax imposed by section 4041(c) other than  
 3                   by reason of a prior imposition of tax, or  
 4                   “(ii) any use in commercial aviation  
 5                   (within the meaning of section 4083(b)).”.

6           (d) REPEAL OF PRIOR TAXATION OF AVIATION  
 7 FUEL.—

8                   (1) IN GENERAL.—Part III of subchapter A of  
 9                   chapter 32 is amended by striking subpart B and by  
 10                   redesignating subpart C as subpart B.

11                   (2) CONFORMING AMENDMENTS.—

12                   (A) Section 4041(c) is amended to read as  
 13                   follows:

14                   “(c) AVIATION-GRADE KEROSENE.—

15                   “(1) IN GENERAL.—There is hereby imposed a  
 16                   tax upon aviation-grade kerosene—

17                   “(A) sold by any person to an owner, les-  
 18                   see, or other operator of an aircraft for use in  
 19                   such aircraft, or

20                   “(B) used by any person in an aircraft un-  
 21                   less there was a taxable sale of such fuel under  
 22                   subparagraph (A).

23                   “(2) EXEMPTION FOR PREVIOUSLY TAXED  
 24 FUEL.—No tax shall be imposed by this subsection  
 25                   on the sale or use of any aviation-grade kerosene if

1 tax was imposed on such liquid under section 4081  
2 and the tax thereon was not credited or refunded.

3 “(3) RATE OF TAX.—The rate of tax imposed  
4 by this subsection shall be the rate of tax specified  
5 in section 4081(a)(2)(A)(iv) which is in effect at the  
6 time of such sale or use.”.

7 (B) Section 4041(d)(2) is amended by  
8 striking “section 4091” and inserting “section  
9 4081”.

10 (C) Section 4041 is amended by striking  
11 subsection (e).

12 (D) Section 4041 is amended by striking  
13 subsection (i).

14 (E) Section 4041(m)(1) is amended to  
15 read as follows:

16 “(1) IN GENERAL.—In the case of the sale or  
17 use of any partially exempt methanol or ethanol fuel,  
18 the rate of the tax imposed by subsection (a)(2)  
19 shall be—

20 “(A) after September 30, 1997, and before  
21 September 30, 2009—

22 “(i) in the case of fuel none of the al-  
23 cohol in which consists of ethanol, 9.15  
24 cents per gallon, and

1 “(ii) in any other case, 11.3 cents per  
2 gallon, and

3 “(B) after September 30, 2009—

4 “(i) in the case of fuel none of the al-  
5 cohol in which consists of ethanol, 2.15  
6 cents per gallon, and

7 “(ii) in any other case, 4.3 cents per  
8 gallon.”.

9 (F) Sections 4101(a), 4103, 4221(a), and  
10 6206 are each amended by striking “, 4081, or  
11 4091” and inserting “or 4081”.

12 (G) Section 6416(b)(2) is amended by  
13 striking “4091 or”.

14 (H) Section 6416(b)(3) is amended by  
15 striking “or 4091” each place it appears.

16 (I) Section 6416(d) is amended by striking  
17 “or to the tax imposed by section 4091 in the  
18 case of refunds described in section 4091(d)”.

19 (J) Section 6427 is amended by striking  
20 subsection (f).

21 (K) Section 6427(j)(1) is amended by  
22 striking “, 4081, and 4091” and inserting “and  
23 4081”.

24 (L)(i) Section 6427(l)(1) is amended to  
25 read as follows:



1           “(1) IN GENERAL.—Except as otherwise pro-  
2       vided in this subsection and in subsection (k), if any  
3       diesel fuel or kerosene on which tax has been im-  
4       posed by section 4041 or 4081 is used by any person  
5       in a nontaxable use, the Secretary shall pay (without  
6       interest) to the ultimate purchaser of such fuel an  
7       amount equal to the aggregate amount of tax im-  
8       posed on such fuel under section 4041 or 4081, as  
9       the case may be, reduced by any refund paid to the  
10      ultimate vendor under paragraph (4)(B).”.

11           (ii) Paragraph (5)(B) of section 6427(l) is  
12      amended by striking “Paragraph (1)(A) shall  
13      not apply to kerosene” and inserting “Para-  
14      graph (1) shall not apply to kerosene (other  
15      than aviation-grade kerosene)”.

16           (M) Subparagraph (B) of section  
17      6724(d)(1), as amended by this Act, is amend-  
18      ed by striking clause (xvi) and by redesignating  
19      clauses (xvii), (xviii), and (xix) as clauses (xvi),  
20      (xvii), and (xviii), respectively.

21           (N) Paragraph (2) of section 6724(d), as  
22      amended by this Act, is amended by striking  
23      subparagraph (X) and by redesignating sub-  
24      paragraphs (Y), (Z), (AA), (BB), and (CC) as

1           subparagraphs (X), (Y), (Z), (AA), and (BB),  
2           respectively.

3           (O) Paragraph (1) of section 9502(b) is  
4           amended by adding “and” at the end of sub-  
5           paragraph (B) and by striking subparagraphs  
6           (C) and (D) and inserting the following new  
7           subparagraph:

8           “(C) section 4081 with respect to aviation  
9           gasoline and aviation-grade kerosene, and”.

10          (P) The last sentence of section 9502(b) is  
11          amended to read as follows:

12         “There shall not be taken into account under paragraph  
13         (1) so much of the taxes imposed by section 4081 as are  
14         determined at the rate specified in section  
15         4081(a)(2)(B).”.

16          (Q) Subsection (b) of section 9508 is  
17          amended by striking paragraph (3) and by re-  
18          designating paragraphs (4) and (5) as para-  
19          graphs (3) and (4), respectively.

20          (R) Section 9508(c)(2)(A) is amended by  
21          striking “sections 4081 and 4091” and insert-  
22          ing “section 4081”.

23          (S) The table of subparts for part III of  
24          subchapter A of chapter 32 is amended to read  
25          as follows:

**“Subpart A—Motor and Aviation Fuels”.**

**“Subpart B—Special Provisions Applicable to Fuels Tax”.**

(f) FLOOR STOCKS TAX.—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date under section 4091 of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act.

1           (2) LIABILITY FOR TAX AND METHOD OF PAY-  
2           MENT.—

3           (A) LIABILITY FOR TAX.—The person  
4           holding the kerosene on October 1, 2004, to  
5           which the tax imposed by paragraph (1) applies  
6           shall be liable for such tax.

7           (B) METHOD AND TIME FOR PAYMENT.—  
8           The tax imposed by paragraph (1) shall be paid  
9           at such time and in such manner as the Sec-  
10          retary of the Treasury shall prescribe, including  
11          the nonapplication of such tax on de minimis  
12          amounts of kerosene.

13          (3) TRANSFER OF FLOOR STOCK TAX REVE-  
14          NUES TO TRUST FUNDS.—For purposes of deter-  
15          mining the amount transferred to any trust fund,  
16          the tax imposed by this subsection shall be treated  
17          as imposed by section 4081 of the Internal Revenue  
18          Code of 1986—

19                 (A) at the Leaking Underground Storage  
20                 Tank Trust Fund financing rate under such  
21                 section to the extent of 0.1 cents per gallon,  
22                 and

23                 (B) at the rate under section  
24                 4081(a)(2)(A)(iv) to the extent of the remain-  
25                 der.

1           (4) HELD BY A PERSON.—For purposes of this  
 2           section, kerosene shall be considered as held by a  
 3           person if title thereto has passed to such person  
 4           (whether or not delivery to the person has been  
 5           made).

6           (5) OTHER LAWS APPLICABLE.—All provisions  
 7           of law, including penalties, applicable with respect to  
 8           the tax imposed by section 4081 of such Code shall,  
 9           insofar as applicable and not inconsistent with the  
 10          provisions of this subsection, apply with respect to  
 11          the floor stock tax imposed by paragraph (1) to the  
 12          same extent as if such tax were imposed by such  
 13          section.

14 **SEC. 872. TRANSFER OF CERTAIN AMOUNTS FROM THE AIR-**  
 15 **PORT AND AIRWAY TRUST FUND TO THE**  
 16 **HIGHWAY TRUST FUND TO REFLECT HIGH-**  
 17 **WAY USE OF JET FUEL.**

18          (a) IN GENERAL.—Section 9502(d) is amended by  
 19          adding at the end the following new paragraph:

20               “(7) TRANSFERS FROM THE TRUST FUND TO  
 21               THE HIGHWAY TRUST FUND.—

22               “(A) IN GENERAL.—The Secretary shall  
 23               pay annually from the Airport and Airway  
 24               Trust Fund into the Highway Trust Fund an  
 25               amount (as determined by him) equivalent to

1 amounts received in the Airport and Airway  
2 Trust Fund which are attributable to fuel that  
3 is used primarily for highway transportation  
4 purposes.

5 “(B) AMOUNTS TRANSFERRED TO MASS  
6 TRANSIT ACCOUNT.—The Secretary shall trans-  
7 fer 11 percent of the amounts paid into the  
8 Highway Trust Fund under subparagraph (A)  
9 to the Mass Transit Account established under  
10 section 9503(e).”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Subsection (a) of section 9503 is amend-  
13 ed—

14 (A) by striking “appropriated or credited”  
15 and inserting “paid, appropriated, or credited”,  
16 and

17 (B) by striking “or section 9602(b)” and  
18 inserting “, section 9502(d)(7), or section  
19 9602(b)”.

20 (2) Subsection (e)(1) of section 9503 is amend-  
21 ed by striking “or section 9602(b)” and inserting “,  
22 section 9502(d)(7), or section 9602(b)”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall take effect on October 1, 2004.

**PART II—DYED FUEL****SEC. 873. DYE INJECTION EQUIPMENT.**

(a) IN GENERAL.—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting “by mechanical injection” after “indelibly dyed”.

(b) DYE INJECTOR SECURITY.—Not later than June 30, 2004, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

**“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.**

**“(a) IMPOSITION OF PENALTY.—**

**“(1) TAMPERING.—**If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, then such per-

1 son shall pay a penalty in addition to the tax (if  
2 any).

3 “(2) FAILURE TO MAINTAIN SECURITY RE-  
4 QUIREMENTS.—If any operator of a mechanical dye  
5 injection system used to indelibly dye fuel for pur-  
6 poses of section 4082 fails to maintain the security  
7 standards for such system as established by the Sec-  
8 retary, then such operator shall pay a penalty.

9 “(b) AMOUNT OF PENALTY.—The amount of the  
10 penalty under subsection (a) shall be—

11 “(1) for each violation described in paragraph  
12 (1), the greater of—

13 “(A) \$25,000, or

14 “(B) \$10 for each gallon of fuel involved,  
15 and

16 “(2) for each—

17 “(A) failure to maintain security standards  
18 described in paragraph (2), \$1,000, and

19 “(B) failure to correct a violation described  
20 in paragraph (2), \$1,000 per day for each day  
21 after which such violation was discovered or  
22 such person should have reasonably known of  
23 such violation.

24 “(c) JOINT AND SEVERAL LIABILITY.—



“(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

7                   “(2) AFFILIATED GROUPS.—If a business entity  
8       described in paragraph (1) is part of an affiliated  
9       group (as defined in section 1504(a)), the parent  
10      corporation of such entity shall be jointly and sever-  
11      ally liable with such entity for the penalty imposed  
12      under this section.”.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

“Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.”.

(d) **EFFECTIVE DATE.**—The amendments made by subsections (a) and (c) shall take effect 180 days after the date on which the Secretary issues the regulations described in subsection (b).

21 SEC. 874. ELIMINATION OF ADMINISTRATIVE REVIEW FOR  
22 TAXABLE USE OF DYED FUEL.

1       “(e) NO ADMINISTRATIVE APPEAL FOR THIRD AND  
2 SUBSEQUENT VIOLATIONS.—In the case of any person  
3 who is found to be subject to the penalty under this section  
4 after a chemical analysis of such fuel and who has been  
5 penalized under this section at least twice after the date  
6 of the enactment of this subsection, no administrative ap-  
7 peal or review shall be allowed with respect to such finding  
8 except in the case of a claim regarding—

9               “(1) fraud or mistake in the chemical analysis,  
10       or  
11               “(2) mathematical calculation of the amount of  
12       the penalty.”.

13       (b) EFFECTIVE DATE.—The amendment made by  
14 this section shall apply to penalties assessed after the date  
15 of the enactment of this Act.

16 **SEC. 875. PENALTY ON UNTAXED CHEMICALLY ALTERED**  
17 **DYED FUEL MIXTURES.**

18       (a) IN GENERAL.—Section 6715(a) (relating to dyed  
19 fuel sold for use or used in taxable use, etc.) is amended  
20 by striking “or” in paragraph (2), by inserting “or” at  
21 the end of paragraph (3), and by inserting after paragraph  
22 (3) the following new paragraph:

23               “(4) any person who has knowledge that a dyed  
24       fuel which has been altered as described in para-  
25       graph (3) sells or holds for sale such fuel for any

1 use which the person knows or has reason to know  
 2 is not a nontaxable use of such fuel,”.

3 (b) CONFORMING AMENDMENT.—Section 6715(a)(3)  
 4 is amended by striking “alters, or attempts to alter,” and  
 5 inserting “alters, chemically or otherwise, or attempts to  
 6 so alter,”.

7 (c) EFFECTIVE DATE.—The amendments made by  
 8 this section shall take effect on the date of the enactment  
 9 of this Act.

10 **SEC. 876. TERMINATION OF DYED DIESEL USE BY INTER-**  
 11 **CITY BUSES.**

12 (a) IN GENERAL.—Paragraph (3) of section 4082(b)  
 13 (relating to nontaxable use) is amended to read as follows:

14 “(3) any use described in section  
 15 4041(a)(1)(C)(iii)(II).”.

16 (b) ULTIMATE VENDOR REFUND.—Subsection (b) of  
 17 section 6427 is amended by adding at the end the fol-  
 18 lowing new paragraph:

19 “(4) REFUNDS FOR USE OF DIESEL FUEL IN  
 20 CERTAIN INTERCITY BUSES.—

21 “(A) IN GENERAL.—With respect to any  
 22 fuel to which paragraph (2)(A) applies, if the  
 23 ultimate purchaser of such fuel waives (at such  
 24 time and in such form and manner as the Sec-  
 25 retary shall prescribe) the right to payment

1 under paragraph (1) and assigns such right to  
2 the ultimate vendor, then the Secretary shall  
3 pay the amount which would be paid under  
4 paragraph (1) to such ultimate vendor, but only  
5 if such ultimate vendor—

6 “(i) is registered under section 4101,  
7 and

8 “(ii) meets the requirements of sub-  
9 paragraph (A), (B), or (D) of section  
10 6416(a)(1).

11 “(B) CREDIT CARDS.—For purposes of  
12 this paragraph, if the sale of such fuel is made  
13 by means of a credit card, the person extending  
14 credit to the ultimate purchaser shall be  
15 deemed to be the ultimate vendor.”.

16 (c) PAYMENT OF REFUNDS.—Subparagraph (A) of  
17 section 6427(i)(4), as amended by this Act, is amended  
18 by inserting “subsections (b)(4) and” after “filed under”.

19 (d) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to fuel sold after September 30,  
21 2004.

1     **PART III—MODIFICATION OF INSPECTION OF**  
2                     **RECORDS PROVISIONS**

3     **SEC. 877. AUTHORITY TO INSPECT ON-SITE RECORDS.**

4         (a) IN GENERAL.—Section 4083(d)(1)(A) (relating  
5 to administrative authority), as amended by this Act, is  
6 amended by striking “and” at the end of clause (i) and  
7 by inserting after clause (ii) the following new clause:

8                     “(iii) inspecting any books and  
9 records and any shipping papers pertaining  
10 to such fuel, and”.

11       (b) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect on the date of the enactment  
13 of this Act.

14     **SEC. 878. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.**

15       (a) IN GENERAL.—Part I of subchapter B of chapter  
16 68 (relating to assessable penalties), as amended by this  
17 Act, is amended by adding at the end the following new  
18 section:

19     **“SEC. 6717. REFUSAL OF ENTRY.**

20         “(a) IN GENERAL.—In addition to any other penalty  
21 provided by law, any person who refuses to admit entry  
22 or refuses to permit any other action by the Secretary au-  
23 thorized by section 4083(d)(1) shall pay a penalty of  
24 \$1,000 for such refusal.

25         “(b) JOINT AND SEVERAL LIABILITY.—

1           “(1) IN GENERAL.—If a penalty is imposed  
 2           under this section on any business entity, each offi-  
 3           cer, employee, or agent of such entity or other con-  
 4           tracting party who willfully participated in any act  
 5           giving rise to such penalty shall be jointly and sever-  
 6           ally liable with such entity for such penalty.

7           “(2) AFFILIATED GROUPS.—If a business entity  
 8           described in paragraph (1) is part of an affiliated  
 9           group (as defined in section 1504(a)), the parent  
 10          corporation of such entity shall be jointly and sever-  
 11          ally liable with such entity for the penalty imposed  
 12          under this section.

13          “(c) REASONABLE CAUSE EXCEPTION.—No penalty  
 14          shall be imposed under this section with respect to any  
 15          failure if it is shown that such failure is due to reasonable  
 16          cause.”.

17          (b) CONFORMING AMENDMENTS.—

18                 (1) Section 4083(d)(3), as amended by this Act,  
 19          is amended—

20                         (A) by striking “ENTRY.—The penalty”  
 21                         and inserting: “ENTRY.—

22                                 “(A) FORFEITURE.—The penalty”, and

23                         (B) by adding at the end the following new  
 24                         subparagraph:

1           “(B) ASSESSABLE PENALTY.—For addi-  
 2           tional assessable penalty for the refusal to  
 3           admit entry or other refusal to permit an action  
 4           by the Secretary authorized by paragraph (1),  
 5           see section 6717.”.

6           (2) The table of sections for part I of sub-  
 7           chapter B of chapter 68, as amended by this Act,  
 8           is amended by adding at the end the following new  
 9           item:

          “Sec. 6717. Refusal of entry.”.

10          (c) EFFECTIVE DATE.—The amendments made by  
 11          this section shall take effect on October 1, 2004.

12           **PART IV—REGISTRATION AND REPORTING**  
 13                           **REQUIREMENTS**

14          **SEC. 879. REGISTRATION OF PIPELINE OR VESSEL OPERA-**  
 15                           **TORS REQUIRED FOR EXEMPTION OF BULK**  
 16                           **TRANSFERS TO REGISTERED TERMINALS OR**  
 17                           **REFINERIES.**

18          (a) IN GENERAL.—Section 4081(a)(1)(B) (relating  
 19          to exemption for bulk transfers to registered terminals or  
 20          refineries) is amended—

21               (1) by inserting “by pipeline or vessel” after  
 22               “transferred in bulk”, and

23               (2) by inserting “, the operator of such pipeline  
 24               or vessel,” after “the taxable fuel”.

1 (b) CIVIL PENALTY FOR CARRYING TAXABLE FUELS  
 2 BY NONREGISTERED PIPELINES OR VESSELS.—

3 (1) IN GENERAL.—Part I of subchapter B of  
 4 chapter 68 (relating to assessable penalties), as  
 5 amended by this Act, is amended by adding at the  
 6 end the following new section:

7 **“SEC. 6718. CARRYING TAXABLE FUELS BY NONREG-**  
 8 **ISTERED PIPELINES OR VESSELS.**

9 “(a) IMPOSITION OF PENALTY.—If any person know-  
 10 ingly transfers any taxable fuel (as defined in section  
 11 4083(a)(1)) in bulk pursuant to section 4081(a)(1)(B) to  
 12 an unregistered, such person shall pay a penalty in addi-  
 13 tion to the tax (if any).

14 “(b) AMOUNT OF PENALTY.—

15 “(1) IN GENERAL.—Except as provided in para-  
 16 graph (2), the amount of the penalty under sub-  
 17 section (a) on each act shall be an amount equal to  
 18 the greater of—

19 “(A) \$10,000, or

20 “(B) \$1 per gallon.

21 “(2) MULTIPLE VIOLATIONS.—In determining  
 22 the penalty under subsection (a) on any person,  
 23 paragraph (1) shall be applied by increasing the  
 24 amount in paragraph (1) by the product of such  
 25 amount and the number of prior penalties (if any)



1 imposed by this section on such person (or a related  
 2 person or any predecessor of such person or related  
 3 person).

4 “(c) JOINT AND SEVERAL LIABILITY.—

5 “(1) IN GENERAL.—If a penalty is imposed  
 6 under this section on any business entity, each offi-  
 7 cer, employee, or agent of such entity or other con-  
 8 tracting party who willfully participated in any act  
 9 giving rise to such penalty shall be jointly and sever-  
 10 ally liable with such entity for such penalty.

11 “(2) AFFILIATED GROUPS.—If a business entity  
 12 described in paragraph (1) is part of an affiliated  
 13 group (as defined in section 1504(a)), the parent  
 14 corporation of such entity shall be jointly and sever-  
 15 ally liable with such entity for the penalty imposed  
 16 under this section.

17 “(d) REASONABLE CAUSE EXCEPTION.—No penalty  
 18 shall be imposed under this section with respect to any  
 19 failure if it is shown that such failure is due to reasonable  
 20 cause.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-  
 22 tions for part I of subchapter B of chapter 68, as  
 23 amended by this Act, is amended by adding at the  
 24 end the following new item:

“Sec. 6718. Carrying taxable fuels by nonregistered pipelines or  
 vessels.”.

1 (c) PUBLICATION OF REGISTERED PERSONS.—Not  
 2 later than June 30, 2004, the Secretary of the Treasury  
 3 shall publish a list of persons required to be registered  
 4 under section 4101 of the Internal Revenue Code of 1986.

5 (d) EFFECTIVE DATE.—The amendments made by  
 6 subsections (a) and (b) shall take effect on October 1,  
 7 2004.

8 **SEC. 880. DISPLAY OF REGISTRATION.**

9 (a) IN GENERAL.—Subsection (a) of section 4101  
 10 (relating to registration) is amended—

11 (1) by striking “Every” and inserting the fol-  
 12 lowing:

13 “(1) IN GENERAL.—Every”, and

14 (2) by adding at the end the following new  
 15 paragraph:

16 “(2) DISPLAY OF REGISTRATION.—Every oper-  
 17 ator of a vessel required by the Secretary to register  
 18 under this section shall display proof of registration  
 19 through an electronic identification device prescribed  
 20 by the Secretary on each vessel used by such oper-  
 21 ator to transport any taxable fuel.”.

22 (b) CIVIL PENALTY FOR FAILURE TO DISPLAY REG-  
 23 ISTRATION.—

24 (1) IN GENERAL.—Part I of subchapter B of  
 25 chapter 68 (relating to assessable penalties), as

1       amended by this Act, is amended by adding at the  
2       end the following new section:

3       **“SEC. 6719. FAILURE TO DISPLAY REGISTRATION OF VES-**  
4                               **SEL.**

5       “(a) FAILURE TO DISPLAY REGISTRATION.—Every  
6 operator of a vessel who fails to display proof of registra-  
7 tion pursuant to section 4101(a)(2) shall pay a penalty  
8 of \$500 for each such failure. With respect to any vessel,  
9 only one penalty shall be imposed by this section during  
10 any calendar month.

11       “(b) MULTIPLE VIOLATIONS.—In determining the  
12 penalty under subsection (a) on any person, subsection (a)  
13 shall be applied by increasing the amount in subsection  
14 (a) by the product of such amount and the number of  
15 prior penalties (if any) imposed by this section on such  
16 person (or a related person or any predecessor of such per-  
17 son or related person).

18       “(c) REASONABLE CAUSE EXCEPTION.—No penalty  
19 shall be imposed under this section with respect to any  
20 failure if it is shown that such failure is due to reasonable  
21 cause.”.

22               (2) CLERICAL AMENDMENT.—The table of sec-  
23 tions for part I of subchapter B of chapter 68, as  
24 amended by this Act, is amended by adding at the  
25 end the following new item:

“Sec. 6719. Failure to display registration of vessel.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall take effect on October 1, 2004.

3 **SEC. 881. REGISTRATION OF PERSONS WITHIN FOREIGN**  
 4 **TRADE ZONES, ETC.**

5 (a) IN GENERAL.—Section 4101(a), as amended by  
 6 this Act, is amended by redesignating paragraph (2) as  
 7 paragraph (3), and by inserting after paragraph (1) the  
 8 following new paragraph:

9 “(2) REGISTRATION OF PERSONS WITHIN FOR-  
 10 EIGN TRADE ZONES, ETC.—The Secretary shall re-  
 11 quire registration by any person which—

12 “(A) operates a terminal or refinery within  
 13 a foreign trade zone or within a customs bond-  
 14 ed storage facility, or

15 “(B) holds an inventory position with re-  
 16 spect to a taxable fuel in such a terminal.”.

17 (b) EFFECTIVE DATE.—The amendments made by  
 18 this section shall take effect on October 1, 2004.

19 **SEC. 882. PENALTIES FOR FAILURE TO REGISTER AND**  
 20 **FAILURE TO REPORT.**

21 (a) INCREASED PENALTY.—Subsection (a) of section  
 22 7272 (relating to penalty for failure to register) is amend-  
 23 ed by inserting “(\$10,000 in the case of a failure to reg-  
 24 ister under section 4101)” after “\$50”.

1 (b) INCREASED CRIMINAL PENALTY.—Section 7232  
 2 (relating to failure to register under section 4101, false  
 3 representations of registration status, etc.) is amended by  
 4 striking “\$5,000” and inserting “\$10,000”.

5 (c) ASSESSABLE PENALTY FOR FAILURE TO REG-  
 6 ISTER.—

7 (1) IN GENERAL.—Part I of subchapter B of  
 8 chapter 68 (relating to assessable penalties), as  
 9 amended by this Act, is amended by adding at the  
 10 end the following new section:

11 **“SEC. 6720. FAILURE TO REGISTER.**

12 “(a) FAILURE TO REGISTER.—Every person who is  
 13 required to register under section 4101 and fails to do  
 14 so shall pay a penalty in addition to the tax (if any).

15 “(b) AMOUNT OF PENALTY.—The amount of the  
 16 penalty under subsection (a) shall be—

17 “(1) \$10,000 for each initial failure to register,  
 18 and

19 “(2) \$1,000 for each day thereafter such person  
 20 fails to register.

21 “(c) REASONABLE CAUSE EXCEPTION.—No penalty  
 22 shall be imposed under this section with respect to any  
 23 failure if it is shown that such failure is due to reasonable  
 24 cause.”.

1           (2) CLERICAL AMENDMENT.—The table of sec-  
 2           tions for part I of subchapter B of chapter 68, as  
 3           amended by this Act, is amended by adding at the  
 4           end the following new item:

          “Sec. 6720. Failure to register.”.

5           (d) ASSESSABLE PENALTY FOR FAILURE TO RE-  
 6           PORT.—

7           (1) IN GENERAL.—Part II of subchapter B of  
 8           chapter 68 (relating to assessable penalties) is  
 9           amended by adding at the end the following new sec-  
 10          tion:

11       **“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER**  
 12               **SECTION 4101.**

13          “(a) IN GENERAL.—In the case of each failure de-  
 14          scribed in subsection (b) by any person with respect to  
 15          a vessel or facility, such person shall pay a penalty of  
 16          \$10,000 in addition to the tax (if any).

17          “(b) FAILURES SUBJECT TO PENALTY.—For pur-  
 18          poses of subsection (a), the failures described in this sub-  
 19          section are—

20               “(1) any failure to make a report under section  
 21               4101(d) on or before the date prescribed therefor,  
 22               and

23               “(2) any failure to include all of the informa-  
 24               tion required to be shown on such report or the in-  
 25               clusion of incorrect information.

1       “(c) REASONABLE CAUSE EXCEPTION.—No penalty  
2 shall be imposed under this section with respect to any  
3 failure if it is shown that such failure is due to reasonable  
4 cause.”.

5           (2) CLERICAL AMENDMENT.—The table of sec-  
6 tions for part II of subchapter B of chapter 68 is  
7 amended by adding at the end the following new  
8 item:

“Sec. 6725. Failure to report information under section 4101.”.

9       (e) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to failures pending or occurring  
11 after September 30, 2004.

12 **SEC. 883. INFORMATION REPORTING FOR PERSONS CLAIM-**  
13 **ING CERTAIN TAX BENEFITS.**

14       (a) IN GENERAL.—Subpart C of part III of sub-  
15 chapter A of chapter 32 is amended by adding at the end  
16 the following new section:

17 **“SEC. 4104. INFORMATION REPORTING FOR PERSONS**  
18 **CLAIMING CERTAIN TAX BENEFITS.**

19       “(a) IN GENERAL.—The Secretary shall require any  
20 person claiming tax benefits—

21           “(1) under the provisions of section 34, 40, and  
22 40B to file a return at the time such person claims  
23 such benefits (in such manner as the Secretary may  
24 prescribe), and

1 “(2) under the provisions of section 4041(b)(2),  
 2 6426, or 6427(e) to file a monthly return (in such  
 3 manner as the Secretary may prescribe).

4 “(b) CONTENTS OF RETURN.—Any return filed  
 5 under this section shall provide such information relating  
 6 to such benefits and the coordination of such benefits as  
 7 the Secretary may require to ensure the proper adminis-  
 8 tration and use of such benefits.

9 “(c) ENFORCEMENT.—With respect to any person  
 10 described in subsection (a) and subject to registration re-  
 11 quirements under this title, rules similar to rules of section  
 12 4222(c) shall apply with respect to any requirement under  
 13 this section.”.

14 (b) CONFORMING AMENDMENT.—The table of sec-  
 15 tions for subpart C of part III of subchapter A of chapter  
 16 32 is amended by adding at the end the following new  
 17 item:

“Sec. 4104. Information reporting for persons claiming certain tax bene-  
 fits.”.

18 (c) EFFECTIVE DATE.—The amendments made by  
 19 this section shall take effect on October 1, 2004.

## 20 **PART V—IMPORTS**

### 21 **SEC. 884. TAX AT POINT OF ENTRY WHERE IMPORTER NOT** 22 **REGISTERED.**

23 (a) TAX AT POINT OF ENTRY WHERE IMPORTER  
 24 NOT REGISTERED.—



1           (1) IN GENERAL.—Subpart C of part III of  
 2           subchapter A of chapter 31, as amended by this Act,  
 3           is amended by adding at the end the following new  
 4           section:

5   **“SEC. 4105. TAX AT ENTRY WHERE IMPORTER NOT REG-**  
 6                           **ISTERED.**

7           “(a) IN GENERAL.—Any tax imposed under this part  
 8           on any person not registered under section 4101 for the  
 9           entry of a fuel into the United States shall be imposed  
 10          at the time and point of entry.

11          “(b) ENFORCEMENT OF ASSESSMENT.—If any per-  
 12          son liable for any tax described under subsection (a) has  
 13          not paid the tax or posted a bond, the Secretary may—

14                  “(1) seize the fuel on which the tax is due, or

15                  “(2) detain any vehicle transporting such fuel,  
 16          until such tax is paid or such bond is filed.

17          “(c) LEVY OF FUEL.—If no tax has been paid or no  
 18          bond has been filed within 5 days from the date the Sec-  
 19          retary seized fuel pursuant to subsection (b), the Secretary  
 20          may sell such fuel as provided under section 6336.”.

21          (2) CONFORMING AMENDMENT.—The table of  
 22          sections for subpart C of part III of subchapter A  
 23          of chapter 31 of the Internal Revenue Code of 1986,  
 24          as amended by section 5245 of this Act, is amended  
 25          by adding after the last item the following new item:

“Sec. 4105. Tax at entry where importer not registered.”.

1 (b) DENIAL OF ENTRY WHERE TAX NOT PAID.—

2 The Secretary of Homeland Security is authorized to deny  
3 entry into the United States of any shipment of a fuel  
4 which is taxable under section 4081 of the Internal Rev-  
5 enue Code of 1986 if the person entering such shipment  
6 fails to pay the tax imposed under such section or post  
7 a bond in accordance with the provisions of section 4105  
8 of such Code.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect on the date of the enactment  
11 of this Act.

12 **SEC. 885. RECONCILIATION OF ON-LOADED CARGO TO EN-**  
13 **TERED CARGO.**

14 (a) IN GENERAL.—Subsection (a) of section 343 of  
15 the Trade Act of 2002 is amended by inserting at the end  
16 the following new paragraph:

17 “(4) IN GENERAL.—Subject to paragraphs (2)  
18 and (3), not later than 1 year after the enactment  
19 of this paragraph, the Secretary of Homeland Secu-  
20 rity, together with the Secretary of the Treasury,  
21 shall promulgate regulations providing for the trans-  
22 mission to the Internal Revenue Service, through an  
23 electronic data interchange system, of information  
24 pertaining to cargo of taxable fuels (as defined in  
25 section 4083 of the Internal Revenue Code of 1986)

1       destined for importation into the United States prior  
2       to such importation.”.

3       (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall take effect on the date of the enactment  
5 of this Act.

6       **PART VI—MISCELLANEOUS PROVISIONS**

7       **SEC. 886. TAX ON SALE OF DIESEL FUEL WHETHER SUIT-**  
8                   **ABLE FOR USE OR NOT IN A DIESEL-POW-**  
9                   **ERED VEHICLE OR TRAIN.**

10       (a) IN GENERAL.—Section 4083(a)(3) is amended—  
11               (1) by striking “The term” and inserting the  
12       following:

13                   “(A) IN GENERAL.—The term”, and

14               (2) by inserting at the end the following new  
15       subparagraph:

16                   “(B) LIQUID SOLD AS DIESEL FUEL.—The  
17       term ‘diesel fuel’ includes any liquid which is  
18       sold as or offered for sale as a fuel in a diesel-  
19       powered highway vehicle or a diesel-powered  
20       train.”.

21       (b) CONFORMING AMENDMENTS.—

22               (1) Section 40B(b)(1)(B), as added by this Act,  
23       is amended by striking “4083(a)(3)” and inserting  
24       “4083(a)(3)(A)”.

1           (2) Section 6426(c)(3), as added by this Act, is  
 2           amended by striking “4083(a)(3)” and inserting  
 3           “4083(a)(3)(A)”.

4           (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall take effect on the date of the enactment  
 6 of this Act.

7   **SEC. 887. MODIFICATION OF ULTIMATE VENDOR REFUND**  
 8                           **CLAIMS WITH RESPECT TO FARMING.**

9           (a) IN GENERAL.—

10           (1) REFUNDS.—Section 6427(l) is amended by  
 11 adding at the end the following new paragraph:

12           “(6) REGISTERED VENDORS PERMITTED TO AD-  
 13 MINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL  
 14 FUEL AND KEROSENE SOLD TO FARMERS.—

15           “(A) IN GENERAL.—In the case of diesel  
 16 fuel or kerosene used on a farm for farming  
 17 purposes (within the meaning of section  
 18 6420(c)), paragraph (1) shall not apply to the  
 19 aggregate amount of such diesel fuel or ker-  
 20 osene if such amount does not exceed 500 gal-  
 21 lons (as determined under subsection  
 22 (i)(5)(A)(iii)).

23           “(B) PAYMENT TO ULTIMATE VENDOR.—  
 24 The amount which would (but for subparagraph  
 25 (A)) have been paid under paragraph (1) with

1           respect to any fuel shall be paid to the ultimate  
2           vendor of such fuel, if such vendor—

3                   “(i) is registered under section 4101,  
4                   and

5                   “(ii) meets the requirements of sub-  
6                   paragraph (A), (B), or (D) of section  
7                   6416(a)(1).”.

8           (2) FILING OF CLAIMS.—Section 6427(i) is  
9           amended by inserting at the end the following new  
10          paragraph:

11                   “(5) SPECIAL RULE FOR VENDOR REFUNDS  
12          WITH RESPECT TO FARMERS.—

13                   “(A) IN GENERAL.—A claim may be filed  
14                   under subsection (1)(6) by any person with re-  
15                   spect to fuel sold by such person for any pe-  
16                   riod—

17                           “(i) for which \$200 or more (\$100 or  
18                           more in the case of kerosene) is payable  
19                           under subsection (1)(6),

20                           “(ii) which is not less than 1 week,  
21                           and

22                           “(iii) which is for not more than 500  
23                           gallons for each farmer for which there is  
24                           a claim.

1           Notwithstanding subsection (l)(1), paragraph  
 2           (3)(B) shall apply to claims filed under the pre-  
 3           ceding sentence.

4           “(B) TIME FOR FILING CLAIM.—No claim  
 5           filed under this paragraph shall be allowed un-  
 6           less filed on or before the last day of the first  
 7           quarter following the earliest quarter included  
 8           in the claim.”.

9           (3) CONFORMING AMENDMENTS.—

10           (A) Section 6427(l)(5)(A) is amended to  
 11           read as follows:

12           “(A) IN GENERAL.—Paragraph (1) shall  
 13           not apply to diesel fuel or kerosene used by a  
 14           State or local government.”.

15           (B) The heading for section 6427(l)(5) is  
 16           amended by striking “FARMERS AND”.

17           (b) EFFECTIVE DATE.—The amendment made by  
 18           this section shall apply to fuels sold for nontaxable use  
 19           after the date of the enactment of this Act.

20           **SEC. 888. TAXABLE FUEL REFUNDS FOR CERTAIN ULTI-**  
 21           **MATE VENDORS.**

22           (a) IN GENERAL.—Paragraph (4) of section 6416(a)  
 23           (relating to abatements, credits, and refunds) is amended  
 24           to read as follows:

1           “(4) REGISTERED ULTIMATE VENDOR TO AD-  
2           MINISTER CREDITS AND REFUNDS OF GASOLINE  
3           TAX.—

4                   “(A) IN GENERAL.—For purposes of this  
5           subsection, if an ultimate vendor purchases any  
6           gasoline on which tax imposed by section 4081  
7           has been paid and sells such gasoline to an ulti-  
8           mate purchaser described in subparagraph (C)  
9           or (D) of subsection (b)(2) (and such gasoline  
10          is for a use described in such subparagraph),  
11          such ultimate vendor shall be treated as the  
12          person (and the only person) who paid such tax,  
13          but only if such ultimate vendor is registered  
14          under section 4101. For purposes of this sub-  
15          paragraph, if the sale of gasoline is made by  
16          means of a credit card, the person extending  
17          the credit to the ultimate purchaser shall be  
18          deemed to be the ultimate vendor.

19                   “(B) TIMING OF CLAIMS.—The procedure  
20          and timing of any claim under subparagraph  
21          (A) shall be the same as for claims under sec-  
22          tion 6427(i)(4), except that the rules of section  
23          6427(i)(3)(B) regarding electronic claims shall  
24          not apply unless the ultimate vendor has cer-  
25          tified to the Secretary for the most recent quar-

1           ter of the taxable year that all ultimate pur-  
 2           chasers of the vendor are certified and entitled  
 3           to a refund under subparagraph (C) or (D) of  
 4           subsection (b)(2).”.

5           (b) CREDIT CARD PURCHASES OF DIESEL FUEL OR  
 6 KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Sec-  
 7 tion 6427(l)(5)(C) (relating to nontaxable uses of diesel  
 8 fuel, kerosene, and aviation fuel), as amended by this Act,  
 9 is amended by adding at the end the following new sen-  
 10 tence: “For purposes of this subparagraph, if the sale of  
 11 diesel fuel or kerosene is made by means of a credit card,  
 12 the person extending the credit to the ultimate purchaser  
 13 shall be deemed to be the ultimate vendor.”.

14           (c) EFFECTIVE DATE.—The amendments made by  
 15 this section shall take effect on October 1, 2004.

16 **SEC. 889. TWO-PARTY EXCHANGES.**

17           (a) IN GENERAL.—Subpart C of part III of sub-  
 18 chapter A of chapter 32, as amended by this Act, is  
 19 amended by adding at the end the following new section:

20 **“SEC. 4106. TWO-PARTY EXCHANGES.**

21           “(a) IN GENERAL.—In a two-party exchange, the de-  
 22 livering person shall not be liable for the tax imposed  
 23 under of section 4081(a)(1)(A)(ii).

24           “(b) TWO-PARTY EXCHANGE.—The term ‘two-party  
 25 exchange’ means a transaction, other than a sale, in which



1 taxable fuel is transferred from a delivering person reg-  
 2 istered under section 4101 as a taxable fuel registrant to  
 3 a receiving person who is so registered where all of the  
 4 following occur:

5           “(1) The transaction includes a transfer from  
 6 the delivering person, who holds the inventory posi-  
 7 tion for taxable fuel in the terminal as reflected in  
 8 the records of the terminal operator.

9           “(2) The exchange transaction occurs before or  
 10 contemporaneous with completion of removal across  
 11 the rack from the terminal by the receiving person.

12           “(3) The terminal operator in its books and  
 13 records treats the receiving person as the person  
 14 that removes the product across the terminal rack  
 15 for purposes of reporting the transaction to the Sec-  
 16 retary.

17           “(4) The transaction is the subject of a written  
 18 contract.”.

19       (b) CONFORMING AMENDMENT.—The table of sec-  
 20 tions for subpart C of part III of subchapter A of chapter  
 21 32, as amended by of this Act, is amended by adding after  
 22 the last item the following new item:

“Sec. 4106. Two-party exchanges.”.

23       (c) EFFECTIVE DATE.—The amendment made by  
 24 this section shall take effect on the date of the enactment  
 25 of this Act.

1 **SEC. 890. MODIFICATIONS OF TAX ON USE OF CERTAIN VE-**  
2 **HICLES.**

3 (a) NO PRORATION OF TAX UNLESS VEHICLE IS DE-  
4 STROYED OR STOLEN.—

5 (1) IN GENERAL.—Section 4481(c) (relating to  
6 proration of tax) is amended to read as follows:

7 “(c) PRORATION OF TAX WHERE VEHICLE SOLD,  
8 DESTROYED, OR STOLEN.—

9 “(1) IN GENERAL.—If in any taxable period a  
10 highway motor vehicle is sold, destroyed, or stolen  
11 before the first day of the last month in such period  
12 and not subsequently used during such taxable pe-  
13 riod, the tax shall be reckoned proportionately from  
14 the first day of the month in such period in which  
15 the first use of such highway motor vehicle occurs  
16 to and including the last day of the month in which  
17 such highway motor vehicle was sold, destroyed, or  
18 stolen.

19 “(2) DESTROYED.—For purposes of paragraph  
20 (1), a highway motor vehicle is destroyed if such ve-  
21 hicle is damaged by reason of an accident or other  
22 casualty to such an extent that it is not economic to  
23 rebuild.”.

24 (2) CONFORMING AMENDMENTS.—

1 (A) Section 6156 (relating to installment  
2 payment of tax on use of highway motor vehi-  
3 cles) is repealed.

4 (B) The table of sections for subchapter A  
5 of chapter 62 is amended by striking the item  
6 relating to section 6156.

7 (b) DISPLAY OF TAX CERTIFICATE.—Paragraph (2)  
8 of section 4481(d) (relating to one tax liability for period)  
9 is amended to read as follows:

10 “(2) DISPLAY OF TAX CERTIFICATE.—Under  
11 regulations by the Secretary, every taxpayer which  
12 pays the tax imposed under this section with respect  
13 to a highway motor vehicle shall, not later than 1  
14 month after the due date of the return of tax with  
15 respect to each taxable period, receive and display on  
16 such vehicle an electronic identification device pre-  
17 scribed by the Secretary.”.

18 (c) ELECTRONIC FILING.—Section 4481, is amended  
19 by redesignating subsection (e) as subsection (f) and by  
20 inserting after subsection (d) the following new subsection:

21 “(e) ELECTRONIC FILING.—Any taxpayer who files  
22 a return under this section with respect to 25 or more  
23 vehicles for any taxable period shall file such return elec-  
24 tronically.”.

1 (d) REPEAL OF REDUCTION IN TAX FOR CERTAIN  
 2 TRUCKS.—Section 4483 of the Internal Revenue Code of  
 3 1986 is amended by striking subsection (f).

4 (e) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as provided in para-  
 6 graph (2), the amendments made by this section  
 7 shall apply to taxable periods beginning after the  
 8 date of the enactment of this Act.

9 (2) REGULATIONS REGARDING DISPLAY OF TAX  
 10 CERTIFICATE.—The Secretary of the Treasury shall  
 11 issue regulations required under section 4481(d)(2)  
 12 of the Internal Revenue Code of 1986 (as added by  
 13 subsection (b)) not later than October 1, 2005.

14 **SEC. 891. DEDICATION OF REVENUES FROM CERTAIN PEN-**  
 15 **ALTIES TO THE HIGHWAY TRUST FUND.**

16 (a) IN GENERAL.—Subsection (b) of section 9503  
 17 (relating to transfer to Highway Trust Fund of amounts  
 18 equivalent to certain taxes), is amended by redesignating  
 19 paragraph (5) as paragraph (6) and inserting after para-  
 20 graph (4) the following new paragraph:

21 “(5) CERTAIN PENALTIES.—There are hereby  
 22 appropriated to the Highway Trust Fund amounts  
 23 equivalent to the penalties assessed under sections  
 24 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232,  
 25 and 7272 (but only with regard to penalties under

1 such section related to failure to register under sec-  
 2 tion 4101).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The heading of subsection (b) of section  
 5 9503 is amended by inserting “AND PENALTIES”  
 6 after “TAXES”.

7 (2) The heading of paragraph (1) of section  
 8 9503(b) is amended by striking “IN GENERAL” and  
 9 inserting “CERTAIN TAXES”.

10 (c) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to penalties assessed after October  
 12 1, 2004.

13 **SEC. 892. NONAPPLICATION OF EXPORT EXEMPTION TO DE-**  
 14 **LIVERY OF FUEL TO MOTOR VEHICLES RE-**  
 15 **MOVED FROM UNITED STATES.**

16 (a) IN GENERAL.—Section 4221(d)(2) (defining ex-  
 17 port) is amended by adding at the end the following new  
 18 sentence: “Such term does not include the delivery of a  
 19 taxable fuel (as defined in section 4083(a)(1)) into a fuel  
 20 tank of a motor vehicle which is shipped or driven out  
 21 of the United States.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 4041(g) (relating to other exemp-  
 24 tions) is amended by adding at the end the following  
 25 new sentence: “Paragraph (3) shall not apply to the

1 sale for delivery of a liquid into a fuel tank of a  
 2 motor vehicle which is shipped or driven out of the  
 3 United States.”.

4 (2) Clause (iv) of section 4081(a)(1)(A) (relat-  
 5 ing to tax on removal, entry, or sale) is amended by  
 6 inserting “or at a duty-free sales enterprise (as de-  
 7 fined in section 555(b)(8) of the Tariff Act of  
 8 1930)” after “section 4101”.

9 (c) EFFECTIVE DATE.—The amendments made by  
 10 this section shall apply to sales or deliveries made after  
 11 the date of the enactment of this Act.

## 12 **PART VII—TOTAL ACCOUNTABILITY**

### 13 **SEC. 893. TOTAL ACCOUNTABILITY.**

14 (a) TAXATION OF REPORTABLE LIQUIDS.—

15 (1) IN GENERAL.—Section 4081(a), as amend-  
 16 ed by this Act, is amended—

17 (A) by inserting “or reportable liquid”  
 18 after “taxable fuel” each place it appears, and

19 (B) by inserting “such liquid” after “such  
 20 fuel” in paragraph (1)(A)(iv).

21 (2) RATE OF TAX.—Subparagraph (A) of sec-  
 22 tion 4081(a)(2), as amended by this Act, is amended  
 23 by striking “and” at the end of clause (iii), by strik-  
 24 ing the period at the end of clause (iv) and inserting

1 “, and”, and by adding at the end the following new  
 2 clause:

3 “(v) in the case of reportable liquids,  
 4 the rate determined under section  
 5 4083(c)(2).”.

6 (3) EXEMPTION.—Section 4081(a)(1) is amend-  
 7 ed by adding at the end the following new subpara-  
 8 graph:

9 “(C) EXEMPTION FOR REGISTERED  
 10 TRANSFERS OF REPORTABLE LIQUIDS.—The  
 11 tax imposed by this paragraph shall not apply  
 12 to any removal, entry, or sale of a reportable  
 13 liquid if—

14 “(i) such removal, entry, or sale is to  
 15 a registered person who certifies that such  
 16 liquid will not be used as a fuel or in the  
 17 production of a fuel, or

18 “(ii) the sale is to the ultimate pur-  
 19 chaser of such liquid.”.

20 (4) REPORTABLE LIQUIDS.—Section 4083, as  
 21 amended by this Act, is amended by redesignating  
 22 subsections (c) and (d) (as redesignated by this Act)  
 23 as subsections (d) and (e), respectively, and by in-  
 24 serting after subsection (b) the following new sec-  
 25 tion:

1       “(c) REPORTABLE LIQUID.—For purposes of this  
2 subpart—

3               “(1) IN GENERAL.—The term ‘reportable liq-  
4 uid’ means any petroleum-based liquid other than a  
5 taxable fuel.

6               “(2) TAXATION.—

7                       “(A) GASOLINE BLEND STOCKS AND ADDI-  
8 TIVES.—Gasoline blend stocks and additives  
9 which are reportable liquids (as defined in para-  
10 graph (1)) shall be subject to the rate of tax  
11 under clause (i) of section 4081(a)(2)(A).

12                      “(B) OTHER REPORTABLE LIQUIDS.—Any  
13 reportable liquid (as defined in paragraph (1))  
14 not described in subparagraph (A) shall be sub-  
15 ject to the rate of tax under clause (iii) of sec-  
16 tion 4081(a)(2)(A).”.

17       (5) CONFORMING AMENDMENTS.—

18               (A) Section 4081(e) is amended by insert-  
19 ing “or reportable liquid” after “taxable fuel”.

20               (B) Section 4083(d) (relating to certain  
21 use defined as removal), as redesignated by  
22 paragraph (4), is amended by inserting “or re-  
23 portable liquid” after “taxable fuel”.



1 (C) Section 4083(e)(1) (relating to admin-  
2 istrative authority), as redesignated by para-  
3 graph (4), is amended—

4 (i) in subparagraph (A)—

5 (I) by inserting “or reportable  
6 liquid” after “taxable fuel”, and

7 (II) by inserting “or such liquid”  
8 after “such fuel” each place it ap-  
9 pears, and

10 (ii) in subparagraph (B), by inserting  
11 “or any reportable liquid” after “any tax-  
12 able fuel”.

13 (D) Section 4101(a)(2), as added by this  
14 Act, is amended by inserting “or a reportable  
15 liquid” after “taxable fuel”.

16 (E) Section 4101(a)(3), as added and re-  
17 designated by this Act, is amended by inserting  
18 “or any reportable liquid” before the period at  
19 the end.

20 (F) Section 4102 is amended by inserting  
21 “or any reportable liquid” before the period at  
22 the end.

23 (G)(i) Section 6718, as added by this Act,  
24 is amended—

1 (I) in subsection (a), by inserting “or  
2 any reportable liquid (as defined in section  
3 4083(c)(1))” after “section 4083(a)(1))”,  
4 and

5 (II) in the heading, by inserting “OR  
6 REPORTABLE LIQUIDS” after “TAXABLE  
7 FUEL”.

8 (ii) The item relating to section 6718 in  
9 table of sections for part I of subchapter B of  
10 chapter 68, as added by this Act, is amended  
11 by inserting “or reportable liquids” after “tax-  
12 able fuels”.

13 (H) Section 6427(h) is amended to read as  
14 follows:

15 “(h) GASOLINE BLEND STOCKS OR ADDITIVES AND  
16 REPORTABLE LIQUIDS.—Except as provided in subsection  
17 (k)—

18 “(1) if any gasoline blend stock or additive  
19 (within the meaning of section 4083(a)(2)) is not  
20 used by any person to produce gasoline and such  
21 person establishes that the ultimate use of such gas-  
22 oline blend stock or additive is not to produce gaso-  
23 line, or

24 “(2) if any reportable liquid (within the mean-  
25 ing of section 4083(c)(1)) is not used by any person

1 to produce a taxable fuel and such person estab-  
2 lishes that the ultimate use of such reportable liquid  
3 is not to produce a taxable fuel,  
4 then the Secretary shall pay (without interest) to such per-  
5 son an amount equal to the aggregate amount of the tax  
6 imposed on such person with respect to such gasoline  
7 blend stock or additive or such reportable liquid.”.

8 (I) Section 7232, as amended by this Act,  
9 is amended by inserting “or reportable liquid  
10 (within the meaning of section 4083(c)(1))”  
11 after “section 4083”).

12 (J) Section 343 of the Trade Act of 2002,  
13 as amended by this Act, is amended by insert-  
14 ing “and reportable liquids (as defined in sec-  
15 tion 4083(c)(1) of such Code)” after “Internal  
16 Revenue Code of 1986”).

17 (b) DYED DIESEL.—Section 4082(a) is amended by  
18 striking “and” at the end of paragraph (2), by striking  
19 the period at the end of paragraph (3) and inserting  
20 “and”, and by inserting after paragraph (3) the following  
21 new paragraph:

22 “(4) which is removed, entered, or sold by a  
23 person registered under section 4101.”.

24 (c) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply to reportable liquids (as defined

1 in section 4083(c) of the Internal Revenue Code) and fuel  
 2 sold or used after September 30, 2004.

3 **SEC. 894. EXCISE TAX REPORTING.**

4 (a) IN GENERAL.—Part II of subchapter A of chap-  
 5 ter 61 is amended by adding at the end the following new  
 6 subpart:

7 “SUBPART E—EXCISE TAX REPORTING

8 **“SEC. 6025. RETURNS RELATING TO FUEL TAXES.**

9 “(a) IN GENERAL.—The Secretary shall require any  
 10 person liable for the tax imposed under Part III of sub-  
 11 chapter A of chapter 32 to file a return of such tax on  
 12 a monthly basis. Not earlier than January 1, 2005, such  
 13 filings shall be in electronic form as prescribed by the Sec-  
 14 retary.

15 “(b) INFORMATION INCLUDED WITH RETURN.—The  
 16 Secretary shall require any person filing a return under  
 17 subsection (a) to provide information regarding any re-  
 18 fined product (whether or not such product is taxable  
 19 under this title) removed from a terminal during the pe-  
 20 riod for which such return applies.”.

21 (b) CONFORMING AMENDMENT.—The table of parts  
 22 for subchapter A of chapter 61 is amended by adding at  
 23 the end the following new item:

“Subpart E—Excise Tax Reporting”.

1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to fuel sold or used after Sep-  
 3 tember 30, 2004.

4 **SEC. 895. INFORMATION REPORTING.**

5 (a) IN GENERAL.—Section 4101(d) is amended by  
 6 adding at the end the following new flush sentence:  
 7 “The Secretary shall require reporting under the previous  
 8 sentence with respect to taxable fuels removed, entered,  
 9 or transferred from any refinery, pipeline, or vessel which  
 10 is registered under this section. Any person who is re-  
 11 quired to report under this subsection and who has 25  
 12 or more reportable transactions in a month shall file such  
 13 report in electronic format.”.

14 (b) EFFECTIVE DATE.—The amendment made by  
 15 this section shall apply on October 1, 2004.

16 **Subtitle I—Mobile Machinery**

17 **SEC. 896. TREATMENT OF MOBILE MACHINERY.**

18 (a) TREATMENT OF MOBILE MACHINERY AS HIGH-  
 19 WAY VEHICLE.—

20 (1) IN GENERAL.—Section 7701(a) (relating to  
 21 definitions) is amended by adding at the end the fol-  
 22 lowing new paragraph:

23 “(48) TREATMENT OF MOBILE MACHINERY AS  
 24 HIGHWAY VEHICLE.—

1           “(A) IN GENERAL.—A vehicle described in  
2           subparagraph (B) shall be treated as a highway  
3           vehicle.

4           “(B) MOBILE MACHINERY.—A vehicle is  
5           described in this subparagraph if such vehicle  
6           consists of a chassis—

7                   “(i) to which there has been perma-  
8                   nently mounted (by welding, bolting, riv-  
9                   eting, or other means) machinery or equip-  
10                  ment to perform a construction, manufac-  
11                  turing, processing, farming, mining, drill-  
12                  ing, timbering, or similar operation if the  
13                  operation of the machinery or equipment is  
14                  unrelated to transportation on or off the  
15                  public highways,

16                  “(ii) which has been specially designed  
17                  to serve only as a mobile carriage and  
18                  mount (and a power source, where applica-  
19                  ble) for the particular machinery or equip-  
20                  ment involved, whether or not such ma-  
21                  chinery or equipment is in operation, and

22                  “(iii) which, by reason of such special  
23                  design, could not, without substantial  
24                  structural modification, be used as a com-  
25                  ponent of a vehicle designed to perform a

1 function of transporting any load other  
2 than that particular machinery or equip-  
3 ment or similar machinery or equipment  
4 requiring such a specially designed chas-  
5 sis.”.

6 (2) EFFECTIVE DATE.—The amendment made  
7 by this subsection shall take effect on the day after  
8 the date of the enactment of this Act.

9 (b) ELIGIBILITY FOR REFUND IN CASE OF LIMITED  
10 USE OF VEHICLE ON HIGHWAYS.—

11 (1) RETAIL SALES AND TIRE TAXES.—

12 (A) IN GENERAL.—Section 6416(b) (relat-  
13 ing to special cases in which tax payments con-  
14 sidered overpayments) is amended by adding at  
15 the end the following new paragraph:

16 “(7) MOBILE MACHINERY.—

17 “(A) IN GENERAL.—If the tax imposed by  
18 section 4051 or 4071 has been paid with re-  
19 spect to any vehicle described in section  
20 7701(a)(48)(B) which meets the use-based test  
21 for each of the first 2 12-month periods after  
22 such payment, 50 percent of such tax shall be  
23 considered an overpayment for each such pe-  
24 riod.

1           “(B) USE-BASED TEST.—For purposes of  
2           subparagraph (A), the use-based test is met if  
3           the use of the vehicle on public highways was  
4           less than 5,000 miles during any 12-month pe-  
5           riod.

6           “(C) SPECIAL RULE FOR USE BY CERTAIN  
7           TAX-EXEMPT ORGANIZATIONS.—For purposes  
8           of subparagraph (A), the use-based test shall be  
9           determined without regard to any use in a vehi-  
10          cle by an organization which is described in sec-  
11          tion 501(c) and exempt from tax under section  
12          501(a).”.

13          (B) EFFECTIVE DATE.—The amendment  
14          made by this paragraph shall take effect on the  
15          day after the date of the enactment of this Act.

16          (2) FUEL TAXES.—

17                 (A) IN GENERAL.—Section 6421(e)(2) (de-  
18                 fining off-highway business use) is amended by  
19                 adding at the end the following new subpara-  
20                 graph:

21                         “(C) USES IN MOBILE MACHINERY.—

22                                 “(i) IN GENERAL.—The term ‘off-  
23                                 highway business use’ shall include any use  
24                                 in a vehicle described in section



1           7701(a)(48)(B) which meets the use-based  
2           test.

3           “(ii) USE-BASED TEST.—For purposes  
4           of clause (i), the use-based test is met if  
5           the use of the vehicle on public highways  
6           was less than 5,000 miles during the tax-  
7           payer’s taxable year.

8           “(iii) SPECIAL RULE FOR USE BY  
9           CERTAIN TAX-EXEMPT ORGANIZATIONS.—  
10          For purposes of clause (i), the use-based  
11          test shall be determined without regard to  
12          any use in a vehicle by an organization  
13          which is described in section 501(c) and  
14          exempt from tax under section 501(a).”.

15          (B) ANNUAL REFUND OF TAX PAID.—Sec-  
16          tion 6427(i)(2) (relating to exceptions) is  
17          amended by adding at the end the following  
18          new subparagraph:

19          “(C) NONAPPLICATION OF PARAGRAPH.—  
20          This paragraph shall not apply to any fuel used  
21          in any off-highway business use described in  
22          section 6421(e)(2)(C).”.

23          (C) EFFECTIVE DATE.—The amendments  
24          made by this paragraph shall apply to taxable

1 years beginning after the date of the enactment  
2 of this Act.

3 (3) CONFORMING AMENDMENT FOR TAX-EX-  
4 EMPT USERS WITH RESPECT TO USE TAX.—

5 (A) IN GENERAL.—Section 4483(d)(1) (re-  
6 lating to suspension of tax) is amended by add-  
7 ing at the end the following new subparagraph:

8 “(C) SPECIAL RULE FOR USE BY CERTAIN  
9 TAX-EXEMPT ORGANIZATIONS.—Subparagraph  
10 (A) shall be determined without regard to any  
11 use in a vehicle by an organization which is de-  
12 scribed in section 501(c) and exempt from tax  
13 under section 501(a).”.

14 (B) EFFECTIVE DATE.—The amendment  
15 made by this paragraph shall take effect on the  
16 day after the date of the enactment of this Act.

## 17 **Subtitle J—Additional Provisions**

### 18 **SEC. 897. STUDY OF EFFECTIVENESS OF CERTAIN PROVI-** 19 **SIONS BY GAO.**

20 (a) STUDY.—The Comptroller General of the United  
21 States shall undertake an ongoing analysis of—

22 (1) the effectiveness of the alternative motor ve-  
23 hicles and fuel incentives provisions under subtitle B  
24 and the conservation and energy efficiency provisions  
25 under subtitle C, and

1           (2) the recipients of the tax benefits contained  
 2       in such provisions, including an identification of  
 3       such recipients by income and other appropriate  
 4       measurements.

5       Such analysis shall quantify the effectiveness of such pro-  
 6       visions by examining and comparing the Federal Govern-  
 7       ment's forgone revenue to the aggregate amount of energy  
 8       actually conserved and tangible environmental benefits  
 9       gained as a result of such provisions.

10       (b) REPORTS.—The Comptroller General of the  
 11       United States shall report the analysis required under sub-  
 12       section (a) to Congress not later than December 31, 2004,  
 13       and annually thereafter.

14       **SEC. 898. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES**  
 15                       **ON RAILROADS AND INLAND WATERWAY**  
 16                       **TRANSPORTATION WHICH REMAIN IN GEN-**  
 17                       **ERAL FUND.**

18       (a) TAXES ON TRAINS.—

19           (1) IN GENERAL.—Subparagraph (A) of section  
 20       4041(a)(1) is amended by striking “or a diesel-pow-  
 21       ered train” each place it appears and by striking “or  
 22       train”.

23           (2) CONFORMING AMENDMENTS.—

1           (A) Subparagraph (C) of section  
2           4041(a)(1) is amended by striking clause (ii)  
3           and by redesignating clause (iii) as clause (ii).

4           (B) Subparagraph (C) of section  
5           4041(b)(1) is amended by striking all that fol-  
6           lows “section 6421(e)(2)” and inserting a pe-  
7           riod.

8           (C) Subsection (d) of section 4041 is  
9           amended by redesignating paragraph (3) as  
10          paragraph (4) and by inserting after paragraph  
11          (2) the following new paragraph:

12          “(3) DIESEL FUEL USED IN TRAINS.—There is  
13          hereby imposed a tax of 0.1 cent per gallon on any  
14          liquid other than gasoline (as defined in section  
15          4083)—

16               “(A) sold by any person to an owner, les-  
17               see, or other operator of a diesel-powered train  
18               for use as a fuel in such train, or

19               “(B) used by any person as a fuel in a die-  
20               sel-powered train unless there was a taxable  
21               sale of such fuel under subparagraph (A).

22          No tax shall be imposed by this paragraph on the  
23          sale or use of any liquid if tax was imposed on such  
24          liquid under section 4081.”

1           (D) Subsection (f) of section 4082 is  
2           amended by striking “section 4041(a)(1)” and  
3           inserting “subsections (d)(3) and (a)(1) of sec-  
4           tion 4041, respectively”.

5           (E) Paragraph (3) of section 4083(a) is  
6           amended by striking “or a diesel-powered  
7           train”.

8           (F) Paragraph (3) of section 6421(f) is  
9           amended to read as follows:

10          “(3) GASOLINE USED IN TRAINS.—In the case  
11          of gasoline used as a fuel in a train, this section  
12          shall not apply with respect to the Leaking Under-  
13          ground Storage Tank Trust Fund financing rate  
14          under section 4081.”

15          (G) Paragraph (3) of section 6427(l) is  
16          amended to read as follows:

17          “(3) REFUND OF CERTAIN TAXES ON FUEL  
18          USED IN DIESEL-POWERED TRAINS.—For purposes  
19          of this subsection, the term ‘nontaxable use’ includes  
20          fuel used in a diesel-powered train. The preceding  
21          sentence shall not apply to the tax imposed by sec-  
22          tion 4041(d) and the Leaking Underground Storage  
23          Tank Trust Fund financing rate under section 4081  
24          except with respect to fuel sold for exclusive use by  
25          a State or any political subdivision thereof.”

1 (b) FUEL USED ON INLAND WATERWAYS.—

2 (1) IN GENERAL.—Paragraph (1) of section  
3 4042(b) is amended by adding “and” at the end of  
4 subparagraph (A), by striking “, and” at the end of  
5 subparagraph (B) and inserting a period, and by  
6 striking subparagraph (C).

7 (2) CONFORMING AMENDMENT.—Paragraph (2)  
8 of section 4042(b) is amended by striking subpara-  
9 graph (C).

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall take effect on October 1, 2004.

12 **SEC. 899. DISTRIBUTIONS FROM PUBLICLY TRADED PART-**  
13 **NEERSHIPS TREATED AS QUALIFYING INCOME**  
14 **OF REGULATED INVESTMENT COMPANIES.**

15 (a) IN GENERAL.—Paragraph (2) of section 851(b)  
16 (defining regulated investment company) is amended to  
17 read as follows:

18 “(2) at least 90 percent of its gross income is  
19 derived from—

20 “(A) dividends, interest, payments with re-  
21 spect to securities loans (as defined in section  
22 512(a)(5)), and gains from the sale or other  
23 disposition of stock or securities (as defined in  
24 section 2(a)(36) of the Investment Company  
25 Act of 1940, as amended) or foreign currencies,

1 or other income (including but not limited to  
 2 gains from options, futures or forward con-  
 3 tracts) derived with respect to its business of  
 4 investing in such stock, securities, or currencies,  
 5 and

6 “(B) distributions or other income derived  
 7 from an interest in a qualified publicly traded  
 8 partnership (as defined in subsection (h)); and”

9 (b) SOURCE FLOW-THROUGH RULE NOT TO  
 10 APPLY.—The last sentence of section 851(b) is amended  
 11 by inserting “(other than a qualified publicly traded part-  
 12 nership as defined in subsection (h))” after “derived from  
 13 a partnership”.

14 (c) LIMITATION ON OWNERSHIP.—Subsection (c) of  
 15 section 851 is amended by redesignating paragraph (5)  
 16 as paragraph (6) and inserting after paragraph (4) the  
 17 following new paragraph:

18 “(5) The term ‘outstanding voting securities of  
 19 such issuer’ shall include the equity securities of a  
 20 qualified publicly traded partnership (as defined in  
 21 subsection (h)).”.

22 (d) DEFINITION OF QUALIFIED PUBLICLY TRADED  
 23 PARTNERSHIP.—Section 851 is amended by adding at the  
 24 end the following new subsection:

1       “(h) QUALIFIED PUBLICLY TRADED PARTNER-  
 2 SHIP.—For purposes of this section, the term ‘qualified  
 3 publicly traded partnership’ means a publicly traded part-  
 4 nership described in section 7704(b) other than a partner-  
 5 ship which would satisfy the gross income requirements  
 6 of section 7704(c)(2) if qualifying income included only  
 7 income described in subsection (b)(2)(A).”.

8       (e) DEFINITION OF QUALIFYING INCOME.—Section  
 9 7704(d)(4) is amended by striking “section 851(b)(2)”  
 10 and inserting “section 851(b)(2)(A)”.

11       (f) LIMITATION ON COMPOSITION OF ASSETS.—Sub-  
 12 paragraph (B) of section 851(b)(3) is amended to read  
 13 as follows:

14               “(B) not more than 25 percent of the  
 15 value of its total assets is invested in—

16                       “(i) the securities (other than Govern-  
 17 ment securities or the securities of other  
 18 regulated investment companies) of any  
 19 one issuer,

20                       “(ii) the securities (other than the se-  
 21 curities of other regulated investment com-  
 22 panies) of two or more issuers which the  
 23 taxpayer controls and which are deter-  
 24 mined, under regulations prescribed by the  
 25 Secretary, to be engaged in the same or



1 similar trades or businesses or related  
2 trades or businesses, or  
3 “(iii) the securities of one or more  
4 qualified publicly traded partnerships (as  
5 defined in subsection (h)).”.

6 (g) APPLICATION OF SPECIAL PASSIVE ACTIVITY  
7 RULE TO REGULATED INVESTMENT COMPANIES.—Sub-  
8 section (k) of section 469 (relating to separate application  
9 of section in case of publicly traded partnerships) is  
10 amended by adding at the end the following new para-  
11 graph:

12 “(4) APPLICATION TO REGULATED INVEST-  
13 MENT COMPANIES.—For purposes of this section, a  
14 regulated investment company (as defined in section  
15 851) holding an interest in a qualified publicly trad-  
16 ed partnership (as defined in section 851(h)) shall  
17 be treated as a taxpayer described in subsection  
18 (a)(2) with respect to items attributable to such in-  
19 terest.”.

20 (h) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to taxable years beginning after  
22 the date of the enactment of this Act.

1 **SEC. 899A. CERTAIN BUSINESS RELATED CREDITS AL-**  
 2 **LOWED AGAINST REGULAR AND MINIMUM**  
 3 **TAX.**

4 (a) IN GENERAL.—Subsection (c) of section 38 (re-  
 5 lating to limitation based on amount of tax) is amended  
 6 by redesignating paragraph (4) as paragraph (5) and by  
 7 inserting after paragraph (3) the following new paragraph:

8 “(4) SPECIAL RULES FOR SPECIFIED CRED-  
 9 ITS.—

10 “(A) IN GENERAL.—In the case of speci-  
 11 fied credits—

12 “(i) this section and section 39 shall  
 13 be applied separately with respect to such  
 14 credits, and

15 “(ii) in applying paragraph (1) to  
 16 such credits—

17 “(I) the tentative minimum tax  
 18 shall be treated as being zero, and

19 “(II) the limitation under para-  
 20 graph (1) (as modified by subclause  
 21 (I)) shall be reduced by the credit al-  
 22 lowed under subsection (a) for the  
 23 taxable year (other than the specified  
 24 credits).

1           “(B) SPECIFIED CREDITS.—For purposes  
 2           of this subsection, the term ‘specified credits’  
 3           includes—

4                   “(i) for taxable years beginning after  
 5                   December 31, 2004, the credit determined  
 6                   under section 40, and

7                   “(ii) the credit determined under sec-  
 8                   tion 45 to the extent that such credit is at-  
 9                   tributable to electricity produced—

10                   “(I) at a facility which is origi-  
 11                   nally placed in service after the date  
 12                   of the enactment of this paragraph,  
 13                   and

14                   “(II) during the 4-year period be-  
 15                   ginning on the date that such facility  
 16                   was originally placed in service.”.

17       (b)   CONFORMING    AMENDMENTS.—Paragraph  
 18   (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each  
 19   amended by inserting “or the specified credits” after “em-  
 20   ployee credit”.

21       (c)   EFFECTIVE DATE.—Except as otherwise pro-  
 22   vided, the amendments made by this section shall apply  
 23   to taxable years ending after the date of the enactment  
 24   of this Act.

1 **SEC. 899B. CREDIT FOR QUALIFYING POLLUTION CONTROL**  
 2 **EQUIPMENT.**

3 (a) ALLOWANCE OF QUALIFYING POLLUTION CON-  
 4 TROL EQUIPMENT CREDIT.—Section 46 (relating to  
 5 amount of credit), as amended by this Act, is amended  
 6 by striking “and” at the end of paragraph (2), by striking  
 7 the period at the end of paragraph (3) and inserting “,  
 8 and”, and by adding at the end the following new para-  
 9 graph:

10 “(4) the qualifying pollution control equipment  
 11 credit.”.

12 (b) AMOUNT OF QUALIFYING POLLUTION CONTROL  
 13 EQUIPMENT CREDIT.—Subpart E of part IV of sub-  
 14 chapter A of chapter 1 (relating to rules for computing  
 15 investment credit), as amended by this Act, is amended  
 16 by inserting after section 48A the following new section:  
 17 **“SEC. 48B. QUALIFYING POLLUTION CONTROL EQUIPMENT**  
 18 **CREDIT.**

19 “(a) IN GENERAL.—For purposes of section 46, the  
 20 qualifying pollution control equipment credit for any tax-  
 21 able year is an amount equal to 15 percent of the basis  
 22 of the qualifying pollution control equipment placed in  
 23 service at a qualifying facility during such taxable year.

24 “(b) QUALIFYING POLLUTION CONTROL EQUIP-  
 25 MENT.—For purposes of this section, the term ‘qualifying  
 26 pollution control equipment’ means any technology in-

1 stalled in or on a qualifying facility to reduce air emissions  
2 of any pollutant regulated by the Environmental Protec-  
3 tion Agency under the Clean Air Act, including thermal  
4 oxidizers, regenerative thermal oxidizers, scrubber sys-  
5 tems, evaporative control systems, vapor recovery systems,  
6 flair systems, bag houses, cyclones, continuous emissions  
7 monitoring systems, and low nitric oxide burners.

8 “(c) QUALIFYING FACILITY.—For purposes of this  
9 section, the term ‘qualifying facility’ means any facility  
10 which produces not less than 1,000,000 gallons of ethanol  
11 during the taxable year.

12 “(d) SPECIAL RULE FOR CERTAIN SUBSIDIZED  
13 PROPERTY.—Rules similar to section 48(a)(4) shall apply  
14 for purposes of this section.

15 “(e) CERTAIN QUALIFIED PROGRESS EXPENDITURES  
16 RULES MADE APPLICABLE.—Rules similar to the rules of  
17 subsections (c)(4) and (d) of section 46 (as in effect on  
18 the day before the enactment of the Revenue Reconcili-  
19 ation Act of 1990) shall apply for purposes of this sub-  
20 section.”.

21 (c) RECAPTURE OF CREDIT WHERE EMISSIONS RE-  
22 Duction OFFSET IS SOLD.—Paragraph (1) of section  
23 50(a) is amended by redesignating subparagraph (B) as  
24 subparagraph (C) and by inserting after subparagraph (A)  
25 the following new subparagraph:

1           “(B) SPECIAL RULE FOR QUALIFYING POLLU-  
 2           LUTION CONTROL EQUIPMENT.—For purposes  
 3           of subparagraph (A), any investment property  
 4           which is qualifying pollution control equipment  
 5           (as defined in section 48B(b)) shall cease to be  
 6           investment credit property with respect to a  
 7           taxpayer if such taxpayer receives a payment in  
 8           exchange for a credit for emission reductions  
 9           attributable to such qualifying pollution control  
 10          equipment for purposes of an offset require-  
 11          ment under part D of title I of the Clean Air  
 12          Act.”.

13          (d) SPECIAL RULE FOR BASIS REDUCTION; RECAP-  
 14          TURE OF CREDIT.—Paragraph (3) of section 50(c) (relat-  
 15          ing to basis adjustment to investment credit property), as  
 16          amended by this Act, is amended by inserting “or quali-  
 17          fying pollution control equipment credit” after “energy  
 18          credit”.

19          (e) EFFECTIVE DATE.—The amendments made by  
 20          this section shall apply to property placed in service after  
 21          December 31, 2003, in taxable years ending after such  
 22          date, under rules similar to the rules of section 48(m) of  
 23          the Internal Revenue Code of 1986 (as in effect on the  
 24          day before the date of the enactment of the Revenue Rec-  
 25          onciliation Act of 1990).

1 **SEC. 899C. ELECTRIC TRANSMISSION PROPERTY TREATED**  
 2 **AS 15-YEAR PROPERTY.**

3 (a) IN GENERAL.—Subparagraph (E) of section  
 4 168(e)(3) (relating to classification of certain property),  
 5 as amended by this Act, is amended by striking “and”  
 6 at the end of clause (iii), by striking the period at the  
 7 end of clause (iv) and by inserting “, and”, and by adding  
 8 at the end the following new clause:

9 “(v) any section 1245 property (as de-  
 10 fined in section 1245(a)(3)) used in the  
 11 transmission at 69 or more kilovolts of  
 12 electricity for sale the original use of which  
 13 commences with the taxpayer after the  
 14 date of the enactment of this clause.”.

15 (b) ALTERNATIVE SYSTEM.—The table contained in  
 16 section 168(g)(3)(B) is amended by inserting after the  
 17 item relating to subparagraph (E)(iv) the following:

“(E)(v) ..... 30”.

18 (c) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to property placed in service after  
 20 the date of the enactment of this Act, and prior to July  
 21 1, 2006.

**TITLE IX—HOMESTEAD  
PRESERVATION ACT**

**SEC. 901. SHORT TITLE.**

This title may be cited as the “Homestead Preservation Act”.

**SEC. 902. MORTGAGE PAYMENT ASSISTANCE.**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Housing and Urban Development (referred to in this section as the “Secretary”) shall establish a program under which the Secretary shall award low-interest loans to eligible individuals to enable such individuals to continue to make mortgage payments with respect to the primary residences of such individuals.

(b) ELIGIBILITY.—To be eligible to receive a loan under the program established under subsection (a), an individual shall be—

(1) an individual that is a worker adversely affected by international economic activity, as determined by the Secretary;

(2) a borrower under a loan which requires the individual to make monthly mortgage payments with respect to the primary place of residence of the individual; and

(3) enrolled in a training or assistance program.



1 (c) LOAN REQUIREMENTS.—

2 (1) IN GENERAL.—A loan provided to an eligi-  
3 ble individual under this section shall—

4 (A) be for a period of not to exceed 12  
5 months;

6 (B) be for an amount that does not exceed  
7 the sum of—

8 (i) the amount of the monthly mort-  
9 gage payment owed by the individual; and

10 (ii) the number of months for which  
11 the loan is provided;

12 (C) have an applicable rate of interest that  
13 equals 4 percent;

14 (D) require repayment as provided for in  
15 subsection (d); and

16 (E) be subject to such other terms and  
17 conditions as the Secretary determines appro-  
18 priate.

19 (2) ACCOUNT.—A loan awarded to an indi-  
20 vidual under this section shall be deposited into an  
21 account from which a monthly mortgage payment  
22 will be made in accordance with the terms and con-  
23 ditions of such loan.

24 (d) REPAYMENT.—

1           (1) IN GENERAL.—An individual to which a  
2       loan has been awarded under this section shall be re-  
3       quired to begin making repayments on the loan on  
4       the earlier of—

5           (A) the date on which the individual has  
6       been employed on a full-time basis for 6 con-  
7       secutive months; or

8           (B) the date that is 1 year after the date  
9       on which the loan has been approved under this  
10      section.

11       (2) REPAYMENT PERIOD AND AMOUNT.—

12           (A) REPAYMENT PERIOD.—A loan awarded  
13      under this section shall be repaid on a monthly  
14      basis over the 5-year period beginning on the  
15      date determined under paragraph (1).

16           (B) AMOUNT.—The amount of the month-  
17      ly payment described in subparagraph (A) shall  
18      be determined by dividing the total amount pro-  
19      vided under the loan (plus interest) by 60.

20           (C) RULE OF CONSTRUCTION.—Nothing in  
21      this paragraph shall be construed to prohibit an  
22      individual from—

23           (i) paying off a loan awarded under  
24      this section in less than 5 years; or

1 (ii) from paying a monthly amount  
2 under such loan in excess of the monthly  
3 amount determined under subparagraph  
4 (B) with respect to the loan.

5 (e) REGULATIONS.—Not later than 6 weeks after the  
6 date of enactment of this section, the Secretary shall pro-  
7 mulgate regulations necessary to carry out this section,  
8 including regulations that permit an individual to certify  
9 that the individual is an eligible individual under sub-  
10 section (b).

11 (f) AUTHORIZATION OF APPROPRIATIONS.—There is  
12 authorized to be appropriated to carry out this section,  
13 \$10,000,000 for each of fiscal years 2005 through 2009.

14 **TITLE X—OFFICE OF FEDERAL**  
15 **PROCUREMENT POLICY ACT**  
16 **IMPROVEMENTS**

17 **SEC. 1001. REPORT ON ACQUISITIONS OF GOODS FROM**  
18 **FOREIGN SOURCES.**

19 (a) REPORT.—The Office of Federal Procurement  
20 Policy Act (41 U.S.C. 403 et seq.), as amended by this  
21 Act, is further amended by adding at the end the following  
22 new section:

1   **“SEC. 43. REPORT ON ACQUISITIONS OF GOODS FROM FOR-**  
2                           **EIGN SOURCES.**

3           “(a) Not later than 60 days after the end of each  
4 fiscal year, the head of each executive agency shall submit  
5 to Congress a report on the acquisitions that were made  
6 of articles, materials, or supplies by such executive agency  
7 in that fiscal year from entities that manufacture the arti-  
8 cles, materials, or supplies outside the United States.

9           “(b) The report for a fiscal year under subsection (a)  
10 shall separately indicate the following information:

11               “(1) The dollar value of any articles, materials,  
12 or supplies that were manufactured outside the  
13 United States.

14               “(2) An itemized list of all waivers granted with  
15 respect to such articles, materials, or supplies under  
16 the Buy American Act (41 U.S.C. 10a et seq.).

17               “(3) A summary of—

18                       “(A) the total procurement funds expended  
19 on articles, materials, and supplies manufac-  
20 tured inside the United States; and

21                       “(B) the total procurement funds expended  
22 on articles, materials, and supplies manufac-  
23 tured outside the United States.

24           “(c) The head of each executive agency submitting  
25 a report under subsection (a) shall make the report pub-  
26 licly available by posting on an Internet website.

1 “(d) Subsection (a) shall not apply to any procure-  
2 ment for national security purposes entered into by—

3 “(1) the Department of Defense or any agency  
4 or entity thereof;

5 “(2) the Department of the Army, the Depart-  
6 ment of the Navy, the Department of the Air Force,  
7 or any agency or entity of any of the military de-  
8 partments;

9 “(3) the Department of Homeland Security;

10 “(4) the Department of Energy or any agency  
11 or entity thereof, with respect to the national secu-  
12 rity programs of that Department; or

13 “(5) any element of the intelligence commu-  
14 nity.”.

15 (b) CLERICAL AMENDMENT.—The table of contents  
16 in section 1(b) of the Office of Federal Procurement Policy  
17 Act is amended by adding at the end the following new  
18 item:

“Sec. 43. Report on acquisitions of goods from foreign sources.”.

19 (c) COMMERCE DEPARTMENT REPORT.—Not later  
20 than 60 days after the end of each fiscal year ending after  
21 the date of the enactment of this Act, the Secretary of  
22 Commerce shall submit to Congress and make publicly  
23 available by posting on an Internet website a report on  
24 the acquisitions by foreign governments of articles, mate-  
25 rials, or supplies that were manufactured or extracted in

- 1 the United States in that fiscal year. Such report shall
- 2 indicate the dollar value of such articles, materials, or sup-
- 3 plies.

Passed the Senate May 11, 2004.

Attest:

*Secretary.*

108TH CONGRESS  
2D Session

# S. 1637

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## AN ACT

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.